(27,298)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 543.

KNICKERBOCKER ICE COMPANY, PLAINTIFF IN ERROR,

vs.

LILLIAN E. STEWART.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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a Court of Appeals of the State of New York.

Before State Industrial Commission, Respondent.

In the Matter of the Claim of LILLIAN E. STEWART, for Compensation for Herself and Children for the Death of William M. Stewart, under the Workmen's Compensation Law, Claimant-Respondent,

against

KNICKERBOCKER ICE COMPANY, Employer-Appellant.

Case on Appeal.

Frank R. Savidge, Attorney for Knickerbocker Ice Company, Employer-Appellant, 45 Cedar Street, New York City.
Charles D. Newton, Attorney General of the State of New York, Albany, N. Y.
Robert W. Bonynge, Counsel for State Industrial Commission, No. 230 Fifth Avenue, New York City.
Mrs. Lillian E. Stewart, Claimant, No. 1829 Amsterdam Avenue, New York City.

1 Supreme Court, Appellate Division, Third Department.

Case No. 350,055.

Before State Industrial Commission, Respondent.

In the Matter of the Claim of LILLIAN E. STEWART, for Compensation for Herself and Children for the Death of William M. Stewart, under the Workmen's Compensation Law, Claimant-Respondent,

against

KNICKERBOCKER ICE COMPANY, Employer-Appellant.

Statement Under Rule 41.

This claim arose out of the death of William M. Stewart on August 3rd, 1918. He was a bargeman of the Knickerbocker Ice Company, and fell off an ice bridge at 95th Street, Manhattan, into the Hudson River. The proceeding was started by the widow's claim for compensation served about August 10th, 1918. The
2 matter was brought on for a hearing before the State Industrial Commission on September 18th, 1918, and an award of compensation to the claimant and her children was made of

$76.90 at once and $30.76 biweekly, together with $95.50 for funeral expenses. The names of the original parties are given in full above, and there has been no change in the parties or attorneys pending this proceeding.

Notice of Appeal.

State Industrial Commission.

Case No. 350,055,

Before State Industrial Commission, Respondent.

In the Matter of the Claim of LILLIAN E. STEWART, for Compensation for Herself and Children for the Death of William M. Stewart, under the Workmen's Compensation Law, Claimant-Respondent,

against

KNICKERBOCKER ICE COMPANY, Employer-Appellant.

Please take notice that the above named employer, Knockerbocker Ice Company, hereby appeals to the Appellate Division of
3 the Supreme Court, in and for the Third Judicial Department, from the decision and award of the State Industrial Commission, made herein on September 18, 1918, directing payment of $6.93 a week to Lillian E. Stewart, widow of the above named decedent, during her dependency, and the sum of $1.69 a week to Beatrix Stewart, infant daughter of the above named decedent, and the sum of $1.69 a week to Alida Stewart, infant daughter of the above named decedent, and the sum of $1.69 a week to William M. Stewart, infant son of the above named decedent, and the sum of $1.69 a week to Lenore Stewart, infant daughter of the above named decedent, and the sum of $1.69 a week to Lillian Stewart, infant daughter of the above named decedent, making a total award of $15.38 weekly, and from that part of the decision and award of the State Industrial Commission made herein on September 18, 1918, directing payment of $100 for funeral expenses to Lillian E. Stewart, widow of the above named decedent, and directing that the sum of $76.90 be paid to her for the period from August 3, 1918, to September 7, 1918, and that the sum of $30.76 be paid to her thereafter in biweekly installments, and from each and every part of each and every one of said awards.

Dated, New York, October 8th, 1918.

Yours, &c.,

FRANK R. SAVIDGE,
Attorney for Knickerbocker Ice Company, Employer-Appellant,
45 *Cedar Street, Borough of Manhattan, New York, N. Y.*

4 To Attorney General of the State of New York, Albany, N. Y.

State Industrial Commission, Albany, N. Y., and No. 230 Fifth Avenue, New York City, N. Y.

Hon. Robert W. Bonynge, Counsel for State Industrial Commission, No. 230 Fifth Avenue, New York City, N. Y.

Mrs. Lillian E. Stewart, Claimant, No. 1829 Amsterdam Avenue, New York City, N. Y.

Joseph H. Hollands, Esq., Clerk of the Appellate Division, Third Judicial Department, Albany, N. Y.

5 *Employer's First Report of Injury.*

State Industrial Commission.

Principal Office: The Capitol, Albany, N. Y.

New York Office: 230 Fifth Avenue.

Division of Claims.

File No. 350,055.
Case of —.

Employer's name, Knickerbocker Ice Co. Office address, 1480 Broadway, New York, N. Y.

Business (goods produced, work done or kind of trade or transportation), Ice dealers.

Location of plant or place of work where accident occurred (if not at office address), 95th St. and North River, New York City, N. Y.

Date of accident, 3rd day of August, 1918; hour of day, 12:40 M.

Full name of injured employee, Wm. M. Stewart. Address, 1829 Amsterdam Ave., New York, N. Y.

Sex, Male. Age, 45 years. Single, married, widowed or divorced, married.

Occupation when injured? Bargeman. In what departmenut of plant or branch of work? Working on boat.

Was injured employee doing his regular work? Yes.

Q. How long was injured person in your employment? Since May 22, 1918. Piece or time worker? Time. Wages or average earnings per day? $4.00.

Describe in full how the accident occurred. When in the act of throwing a block while standing on ice bridge on dock, he lost his balance and fell backward into the water.

6 State part of person injured and nature of injury. Drowned.

In what company is Compensation Insurance carried (must be answered)? This Company carries its own risk.

Firm name: Knickerbocker Ice Company.

Signed: W. W. GALLAGHER,
Official Title: *Claim Agent.*

Signed at New York, N. Y., this 21st day of August, 1918.

Instructions.

The employer must fill out this form and return same to the Bureau of Workmen's Compensation, at its New York Office, No. 230 Fifth Avenue, within ten days after every accident which causes any loss of time other than the balance of the day, turn or shift on which the accident occurred, or which requires any medical attendance other than first aid treatment. (See penalty, section 111 of the law printed below.)

In filling out this form use pen or typewriter.

If injured employee is not fully recovered before this notice is sent by you, the Commission will send you Form No. C-11 for second notice; report thereon at proper time. (See instructions thereon.)

If employer be the State or a political subdivision thereof, give name of person with whom to correspond about a claim.

Section 111 of Workmen's Compensation Law.

Section 111.—Record and Report of Injuries by Employers.—
7 Every employer shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within ten days after the occurrence of an accident resulting in personal injury, a report thereof shall be made in writing by the employer to the Commission, upon blanks to be procured from the Commission for that purpose. Such report shall state the name and nature of the business of the employer, the location of his establishment or place of work, the name, address and occupation of the injured employee, the time, nature and cause of the injury and such other information as may be required by the Commission. An employer who refuses or neglects to make a report as required by this section shall be guilty of a misdemeanor, punishable by a fine of not more than five hundred dollars.

Widow's First Report of Injury.

State Industrial Commission,

230 Fifth Avenue,

New York, N. Y.

Knickerbocker Ice Company, 1480 Broadway, New York, N. Y.

GENTLEMEN:

Pursuant to Section 18 of the Workmen's Compensation Act of the State of New York, you are hereby notified that my late husband, William M. Stewart, met his death on Saturday August 3rd,
8 1918, at about 12:30 mid-day, while in the employ of the Knickerbocker Ice Co. of 1480 Broadway, New York, N. Y., as a laborer on the dock at the foot of West 95th St. and North River and engaged in unloading a barge of ice and loading the same on wagons. While so engaged he fell into the water and was drowned.

The said decedent resided at No. 1829 Amsterdam Ave., New York, N. Y., and left him surviving the undersigned, his widow, and five dependent children, under the age of 18 years.

The names and ages of said children are:

Beatrix, aged 14 years.
Alida, aged 13 years,
William M., aged 10 years,
Lenora, aged 8 years,
Lillian, aged 6 years,

all residing with the undersigned at No. 1829 Amsterdam Ave., New York, N. Y.

Dated New York, N. Y., August 10th, 1918.

(Signed) LILLIAN E. STEWART,
Widow.

Residence: 1829 Amsterdam Ave., New York, N. Y.

BERTRAND L. PETTIGREW,
Attorney for Claimant, 25 Liberty St., New York City.

9 *Form of Claim for Compensation by Widow in Death Case.*

State Industrial Commission.

230 Fifth Avenue, N. Y.

New York Office.

I hereby make claim for compensation under Section 16 of Chapter 67 of the consolidated laws. My claim arises out of the death of

Wm. M. Stewart, who died on the 3rd day of August, 1918, as a result of injury sustained on 3rd day of August, 1918, in the employ of Knickerbocker Ice Company of 1480 Broadway, New York, N. Y.

I was the wife of the deceased Wm. Stewart.

I have the following children who were under 18 years of age at the time of death of my husband:

Name.	Date of birth.
Beatrix	Feb. 11, 1904
Alida	Aug. 3, 1905
William M.	Jan. 14, 1908
Lenore	Nov. 26, 1909
Lillian	Mar. 30, 1912

I was born February 1st, 1878.

I was married to the deceased on the 29th day of May, 1901, at Borough of Manhattan, New York City, N. Y.

10 To the best of my knowledge and belief the deceased was earning at the time of the injury wages at the rate of $4.00 per day.

(Signed) LILLIAN E. STEWART,
1829 *Amsterdam Ave.,*
New York City, N. Y.

Dated this 14th day of August, 1918.

Affidavit.

STATE OF NEW YORK,
County of New York, ss:

On this 14th day of August, A. D. 1918, personally appeared before me the above named Lillian E. Stewart and made oath that the answers by her above named and subscribed are true.

ADA A. GALLIN,
Notary Public, 543 *West End Ave., New York City.*

11 *Proof of Death by Employer.*

State Industrial Commission.

Principal Office: The Capitol, Albany, N. Y.

New York Office: 230 Fifth Avenue.

Stamped: Received Aug. 24, 1918.

Division of Claims.

Case No. 350055 N. Y.
Case of William M. Stewart.

In the matter of the death of William M. Stewart, late of 1829 Amst. Ave., N. Y. C., who was drowned about 12:40 P. M., on the 3rd day of August, 1918.

What is your name in full? Wm. W. Gallagher.

What is your post-office address? Rooms 1213-25, No. 1480 Broadway, N. Y. City, N. Y.

What is the name of the firm or corporation with which you are connected? Knickerbocker Ice Company.

What is the kind and character of the business conducted? Manufacturers and Dealers in Ice.

In what company is compensation insurance carried? This company carries its own risk.

What is your official title? Claim agent.

How long have you been personally acquainted with the deceased? Did not know him.

How long was he in your employ? From May 22 to Aug. 3, 1918.

In what capacity was he in your employ? Bargeman, working on boats unloading ice at wharf.

What were his average daily wages? $4.00.

12 Do you know, as a matter of personal knowledge that he was accidental-y or otherwise injured? I do not.

What are the full particulars as to how, when and where he was so injured? At about 12:40 P. M. on August 3rd, 1918, when in the act of throwing a block while standing on ice bridge on dock at 95th St. and North River, N. Y. City, he lost his balance and fell backwards into the water.

On what date did he die? August 3, 1918.

Dated at New York, N. Y., this 21st day of August, 1918.

(Signature) WM. W. GALLAGHER.

Witness to signature:
H. J. MARRE CELLA, JR.

P. O. address of witness: S. Orange, N. J.

STATE OF NEW YORK,
County of New York, ss:

On this twenty-first day of August, 1918, personally appeared before the undersigned, a Commissioner of Deeds, in and for the said county and state, the above named Wm. W. Gallagher, to me well known, and to whom I have read the foregoing questions and answers, and all the matter above stated, and who, after being
13 duly advised in the premises, subscribed his (her) name hereto in my presence, and made oath that the foregoing statements, and each and all of them are full and true, and are made without reservation or concealment.

[SEAL.] SIMON SVERDLIK,
Commissioner of Deeds.

Proof of Death by Undertaker.

State Industrial Commission.

Principal Office: The Capitol, Albany, N. Y.

New York Office: 230 Fifth Avenue.

Stamped: Received Aug. 23, 1918.

Division of Claims.

Case No. 350055 N. Y.
Case of William M. Stewart.

STATE OF NEW YORK,
County of New York, ss:

Charles J. Coote, being duly sworn, says that he is a duly licensed undertaker of New York City, 415 1st Ave., that as such he was required on the 7th day of August, 1918, to prepare the dead body of William Stewart, who was drowned August 3, 1918, for burial; that he placed a coffin, containing the said body, in a grave in Greenwood cemetery; that he shipped said body via to that he was directed to conduct such burial by Mrs. Lillian E. Stewart, wife who authorized the following:

14

Zinc Line- Case	$50.00
Opening grave No. 1 in Lot Greenwood	10.00
P (illegible)	2.50
Hearse to Greenwood Cemetery	12.50
2 Coaches to Greenwood Cemetery	16.00
1 Coach to Ctiy Hall	4.50
Total	$95.50

That he was informed said bill would be paid by Mrs. Lillian E. Stewart (wife); that no part of said bill of expenses so authorized for said burial has been paid, except.

(Signed) CHARLES J. COOTE.

Subscribed and sworn to before me, this 22 day of August, A. D. 1918.

MICHAEL P. DALY,
New York Commissioner of Deeds,
Notary Public.

Certificate of person who made funeral arrangements will be required below unless itemized bill of undertaker endorsed "correct" by such person, is attached.

Certificate of Person Authorizing Burial.

I hereby certify that I have read the foregoing affidavit of Charles J. Coote, undertaker; that I authorized the items of expense therein amounting to $95.50 as the funeral bill (correct) of deceased workman.

(Signed) MRS. LILLIAN E. STEWART,

(NOTE.—The entire amount allowed for burial under the Workmen's Compensation Act cannot exceed $100.00.)

Letter to Employer, Dated August 19, 1918.

August 19, 1918.

Please Address reply to "A. F. Paura."

In re case #350055.

William M. Stewart, Deceased.

Knickerbocker Ice Co., Employer.

Knickerbocker Ice Co., 1480 Broadway, New York City.

GENTLEMEN:

Will you kindly complete the enclosed forms C–2 and C–19 in connection with William M. Stewart, who was fatally injured on August 3rd, 1918, while in your employ.

Trusting you will give this matter your immediate attention, we are,

Very truly yours,

STATE INDUSTRIAL COMMISSION,
DIVISION OF CLAIMS.

—— ——, *Chief.*

AEP/FR

Memorandum Signed by Lillian E. Stewart.

Received by Commission, August 23, 1918.

Mr. Stewart fell from dock and was drowned on Saturday afternoon, August 3, at 12:30. His body was recovered on Monday and taken to the morgue. The funeral services were held in the chapel of the morgue. The body was so decomposed that it was not allowed to be taken out of the morgue for the funeral services. There was no doctor called upon to examine him so far as I know. I am, therefore, unable to have the attached certificate filled out. Coroner's case.

(Signed) LILLIAN E. STEWART.

Record of Marriage.

NEW YORK, Aug. 15, 1918.

A Transcript of the Record of the Marriages Reported to the Department of Health of the City of New York,

The City of New York, Department of Health.

No. of Certificate, 9265.

Certificate and Record of Marriage, State of New York, of (Groom) William Macbeth Stewart and (Bride) Lillian Frances Crisville.

Groom's residence, 325 East 23rd Street; bride's residence, 412 East 23rd Street.

Age: 27 years; age, 23 years.

Color: White; color, white.

17 Single, widowed or divorced: single; single, widowed or divorced: single.

Occupation: —; maiden name if a widow: —.

Birthplace: New York City; birthplace; Hanford, Conn.

Father's name: Geo. C. Stewart; father's name; Wm. Chrisville.

Mother's maiden name: Margaret Macbeth; mother's maiden name: Nora Crowley.

Number of groom's marriage: first; number of bride's marriage: first.

I hereby certify that the above-named groom and bride were joined in marriage by me in accordance with the laws of the State of New York, at New York City, in the Borough of Manhattan, City of New York, this 29th day of May, 1901.

Signature of person performing the ceremony; Frank M. Goodchild; official station: minister Rose Geiser.

Witnesses of the marriage: Henry Steinfeld; residence: 228 West 43rd Street.

Date of record: June 3, 1901.

A true copy.

FANK J. MONAGHAN, M. D.,
Secretary Board of Health, City of New York.
S. W. WYNEE, M. D.
Assistant Registrar.

18 NOTICE.—In issuing this transcript of record, the Department of Health of the City of New York does not certify to the truth of the record transcribed. The seal of the Department of Health attests only the correctness of the transcript, and no inquiry as to the facts reported has been provided for by law.

Certificate of Death.

NOTE.—In issuing this transcript of record, the Department of Health of the City of New York does not certify to the truth of the statements made thereon, as no inquiry as to the facts has been provided for by law.

New York, Aug. 30, 1918.

A Transcript of a Record on File with the Department of Health of the City of New York.

State of New York.

Department of Health of the City of New York.

Bureau of Records.

Certificate of Death.

Registered No. 22827.

1. Place of death: Borough of Manhattan. No. 95th St. & North River. Character of premises, whether tenement, private, hotel, hospital or other place, etc.: —.

19 2. Full name: William Stewart.

3. Sex: M.

4. Color or Race: W.

5. Single, married, widowed or divorced: M.

6. Date of birth: —.

7. Age: 45 years.

8. Occupation: (*a*) trade, profession, or particular kind of work: Caulker. (*b*) general nature of industry, business or establishment in which employed (or employer): —.

9. Birthplace (State or country): U. S.; (*b*) How long resident in City of New York? Life.

10. Name of father: George C.

11. Birthplace of father (State or country): U. S.

12. Maiden name of mother: Margaret McBeth.

13. Birthplace of mother: Scotland.

14. Special information required in deaths in hospitals and in institutions and in deaths of non-residents and recent residents. Former or usual residence: 1829 Amsterdam Ave.

15. Date of death: August 3, 1918.

16. I hereby certify that the foregoing particulars (Nos. 1 to 15, inclusive) are correct as near as the same can be ascertained, and I further certify that I have this 6 day of August, 1918, taken charge of the body of deceased found at morgue and that I have investigated the essential facts concerning the circumstances of the death.

17. I further certify that I have viewed said body and from exam. and evidence that he died on the 3rd day of August, 1918, at — M. and that the chief and determining cause of his death was Submersion, drowning; that the contributing causes were, fell from pier at 95th Street & North River.

J. A. SONZALE,
Assistant Medical Examiner.

Approved:
CHARLES NOVIN, M. D.

Filed Aug. 6, 1918.

18. Place of burial: Greenwood Ceme.

19. Undertaker: Name, C. J. Coote; address, 415 1st Ave. Date of burial: Aug. 7, 1918.

This is to certify that the foregoing is a true copy (photographic) of a record on file in the Bureau of Records, Department of Health, City of New York.

S. W. WYNNE, M. D.
Assistant Registrar of Records.

Hearing Testimony.

State Industrial Commission.

230 Fifth Avenue, New York City.

September 18th, 1918.

D. C. #350055.

WILLIAM M. STEWART, Claimant,

—.

KNICKERBOCKER ICE CO., Employer; Eelf Insurer, Carrier.

Hearing Before Deputy Commissioner William C. Archer.

September 18th, 1918.

L. B. Siegel, Hearing Stenographer.

Appearances:

Mrs. Stewart, widow, present in person.
Mr. C. R. Neal, representing the employer-carrier.

Commr. Archer: What is the contention of the carrier?
Mr. Neal. There is a lot in detail. In the first place I will raise the constitutionality of the congressional amendment of the judicial

code, and besides that I don't believe the accident occurred in the course of his employment. Then, you figured the mathematical problem wrong. Then, I want some proof that she is the widow, and the date of marriage, etc., and where she and the children were born, etc.

Commr. Archer: Here is the widow and we can get that information right now. Be sworn.

22 Mrs. LILLIAN E. STEWART, 1829 Amsterdam Avenue, being duly sworn, testified as follows:

By Commr. Archer:

Q. Are you the widow of William M. Stewart?
A. Yes, sir.
Q. When were you married?
A. May 29th, 1901, 17 years ago.
Q. That is 17 years past?
A. Yes.
Q. At what place were you married?
A. I have it right here (handing a piece of paper looking like a certificate to Mr. Archer). There is a little misprint there, but it is pretty near right.

Mr. Neal: I am not disputing it, only I wanted to have some proof of it.

Commr. Archer: She submits a certificate of marriage, signed by "Williams, Ass't Registrar."

(Commr. Archer continuing:)

Q. Were you the wife of William M. Stewart at the time of his death?
A. Yes.
Q. How many children under 18 years of age have you?
A. Five.
Q. How old is Lillian?
A. Six years old.

Mr. Neal: Will you ask, please where they were born?

Q. What was the date of her birth?
A. 30th of March; she was six years old last March.

By Mr. Neal:

Q. She was born in New York City?
A. Yes, in New York City.

23 By Commr. Archer:

Q. And all these five children are living?
A. Yes.

By Mr. Neal:

Q. And all born in the Borough of Manhattan?
A. Yes, sir.

By Commr. Archer:

Q. What wages was your husband receiving at the time of his death?
A. Four dollars a day.

Mr. Neal: That's correct, I believe.
Commr. Archer: What is your objection that you raised regarding the wages?
Mr. Neal: There is a mistake made in the arithmetic. You make the award on the theory of what?—Section 16, subdivision 4 I Suppose?
Clerk Meuller: Yes.
Mr. Neal: On the theory that he earned more than $15 a week.
Commr. Archer: As to the wife and children.
Mr. Neal: $1,200 a year.
Commr. Archer: That's Section 14.
Clerk Meuller: Yes, $100 a month.
Mr. Neal: That's the basis I suppose.
Commr. Archer: 4x300, divided by 52. Numbered paragraph 1 is the rule we use. It is paragraph 1 and 4 together; it is not dividing $1,200 by 52.
Mr. Neal: The result is the same.
24 Commr. Archer: Yes, the question is not that we use paragraph 4 alone.
Mr. Neal: We never will appeal on the arithmetic; it is only whether you multiply and divide right.
Commr. Archer: It will give the same figures but it is not the rule we use. Now what are the other questions you raised?
Mr. Neal: Through an examination to find out exactly what happened.
Mr. Archer: The employer says "At 12:40 P. M. on August 3rd, 1918, when in the act of throwing a block while standing on ice bridge on dock at 95th Street & North River, New York City, he lost his balance and fell backwards into the water."
Mr. Neal: Yes.
Commr. Archer: Is that all right? We will accept that as your statement if that is your statement.
Mr. Neal: That statement is substantially correct but it wasn't in the course of his employment. That was not in the course of his work.
Commr. Archer: Mr. Gallagher, the Claim Agent for the Employer says it was in the course of his employment and in the course of his regular work, in the First Report of Injury of the employer. These are the questions asked and answers given: "Occupation when injured? Bargeman. In what department of plant or branch of

work? Working on boat. Was injured employee doing his regular work? Yes." Do you want to go into that a little more carefully?

Mr. Neal: Yes.

25 Commr. Archer: Have you any witnesses?

Mr. Neal: Yes.

Commr. Archer: Call them.

Mr. PATRICK L. NORMANDEAU, 374 West 127th Street, New York City, being duly sworn, testified as follows:

By Mr. Neal:

Q. In whose employ were you on August 3rd, 1918?
A. Knickerbocker Ice Co.
Q. Where did you work for them?
A. 95th Street and North River.
Q. What was the nature of the employment?
A. Boat master.
Q. Were you in charge of that particular plant?
A. Yes.
Q. Were you there at the time of the accident to William M. Stewart?
A. Yes.
Q. What were the nature of Stewart's duties?
A. Bargeman.
Q. And what did those duties consist of?
A. Pulling ice in the boat and hooking on ice.
Q. What work had he been doing during the day?
A. That's all he was doing, working in the boat.
Q. And what time did the accident happen?
A. Twenty minutes of one.
Q. What was being done at the time?
A. Taking down the rigging on the barge.
Q. And what were you going to do, close up for the season?
A. Yes.

26 Q. Had Stewart's work for the day terminated?
A. No, not then.
Q. When did it terminate?
A. Four o'clock.
Q. Was there any boat lying there in the river?
A. Yes.
Q. Was it in the Hudson River?
A. Yes.
Q. Where did the ice come from?
A. Somewhere up the Hudson River.
Q. It was brought down the Hudson River?
A. Yes.
Q. What, if any, instructions had you given this man Stewart at the time prior to the accident?
A. I had given all the rest of the men but not him, instructions to take down the rigging.

Q. To take down the rigging?
A. Yes.
Q. And did you tell Stewart anything?
A. No, but I told him not to go on the bridge.
Q. You told him not to go on the bridge?
A. Yes.
Q. Anything else?
A. No.
Q. You told him nothing about taking down rigging?
A. No.

By Commr. Archer:

Q. What was he doing on the bridge?
A. At that time?
Q. Yes?
A. Looking around watching us work

By Mr. Neal:

Q. Did you give him any instructions not to help you?
A. Yes.
Q. You gave him distinct instructions not to help you take down the rigging?
A. Yes.
Q. What did you say to him about not taking down the rigging that day?
27 A. I said "All you fellows go up there and take down that rigging and you Stewart stay down; you can't go up there."
Q. Explain the physical condition of the man Stewart?
A. He was a cripple, he was lame and couldn't go up there.
Q. What was the nature of his crippled condition?
A. He had a short leg, something the matter with his hip and he limped.
Q. And anybody engaged in the taking down of the tackle required what?
A. Had to climb up poles, to hoist the ice out of the ice box boat, they had some tackle up there to take the ice out of the box boat but we never had opportunity to use that and I told them to take it down but I told Stewart to stay down and not to go up there.
Q. He was a bargeman and worked inside of the boat, pulling the ice up or pulling it over to the hatch?
A. Yes.
Q. And you told him not to help in taking down this rigging?
A. Yes, sir.

Mr. Neal: That's all.

Commr. Archer: The employer in his report says he was in the act of throwing a block while standing on the ice bridge, that he lost his balance and fell in the water.

Mr. Neal: He (meaning witness) doesn't know that; that's the fact; the next man will show that. The next man saw the accident.

Commr. Archer: You said he was working that day—I will ask this man a few questions.

By Commr. Archer:

Q. You say he was working that day and he was on the payroll of the company?

28 A. He worked in the boat; at this time there were no wagons there and we were going to close there and as there was nothing doing I had the men take down the rigging.

Q. And Stewart came around to watch the work being done?

A. Yes, the men never stayed in the boat while there was no wagons there.

Q. And what orders did you give him?

A. I said "You leave the other men do the work," because I knew he was unable to get up there.

Q. When did you tell him that?

A. Before we went to take down the rigging.

Q. Did anybody hear you tell him that?

A. I wouldn't say positively, maybe the other men did hear me. I am not sure about that.

Q. You say he couldn't get up on the ice bridge?

A. Yes, on the bridge but not on these "skinny legs," it is——

Q. (Int'g.) What is the ice bridge?

A. On the dock, and these things are above that.

Q. What are they?

A. What we call "skinny legs" sort of working with a block and fall to hoist ice out of the box boat.

Q. And when it comes out of the box boat you swing it around?

A. No, no, it stands perpendicular and we lay it over and away when the ice comes in.

Q. It was really a platform?

A. Yes.

Q. Reaching from the dock?

A. No, the boat comes to the edge of the dock, where the wagon is backed into it.

Q. And this was a board laid from the dock to the wagon?

A. It is laid from the platform so you can swing the ice up over the boat.

Q. What is the ice bridge?

A. This platform, on the side of the dock.

29 Q. Is it permanent there?

A. Yes.

Q. Is it attached to the dock?

A. Yes, it was built there.

Q. And he was standing on that platform?

A. Yes.

Q. And you told him not to stand there?

A. No.

Q. What did you tell him?

A. I told him in the office, my office is just beyond there, I said,

"You needn't bother, leave these men do the work," and he went up there.

Q. Was he not allowed to stand where he was standing?

A. They all went up there, in fact everybody, they generally stay around there.

Q. And he was sitting there?

A. Walking up and down there.

Q. And he had the right to be where he was?

A. Yes, as far as that goes. I couldn't compel these men to stay in the boat.

Q. Was it on the property of the Knickerbocker Ice Co.?

A. Yes.

Q. What time of the day was it?

A. Twenty minutes to one.

Q. That wasn't the lunch hour?

A. No.

Q. What are the hours?

A. Four to four.

Q. What is the lunch hour?

A. Two hours in the morning, or an hour in the morning and an hour in the afternoon.

Q. This was not the intermission for lunch?

A. No, sir.

Commr. Archer: Call our next witness.

Mr. Neal: The contention is that he was a mere volunteer in throwing this board or block and he was acting contrary to instructions when he did it.

Commr. Archer: All right; call your next witness.

30 Mr. CHRISTOPHE DUFF, 441 East 121st Street, New York City, being duly sworn, testified as follows:

By Mr. Neal:

Q. You were in the employ of the Knickerbocker Ice Co. on August 3rd, 1918?

A. Yes, sir.

Q. At the same time Mr. Stewart was working for them?

A. Yes.

Q. And Mr. Normandeau was your boss?

A. Yes.

Q. And you were the assistant?

A. Yes.

Q. Tell me what was the kind of work that Mr. Stewart did there at that time?

A. He was a bargeman, hooking on ice.

Q. Did he work about boats or in boats?

A. Yes.

Q. All the time?

A. Yes.

Q. What was the nature of his work?

A. That was his work there, what I told you, he was bargeman.
Q. Tell me just what happened?
A. They were going to take the bridge there and close up, and the last I seen Stewart was he pitched a block over to me and said, "Take that in," and I was working and paid no attention and the first thing I heard was a noise. I didn't see him fall.
Q. He threw a block to you and you heard a splash?
A. Yes.

By Commr. Archer:

Q. Did you catch the block?
A. It was on the floor, just a few feet from me,—he was 25 to 30 feet from me at the time, on the bridge.

By Mr. Neal:

Q. You say he started to throw the block and then you heard a splash?
A. It was a couple of seconds after that, but I didn't hear
31 him fall, I heard a noise, but I didn't see him fall.
Q. That is you didn't see him fall into the water, all you heard was a splash?
A. Yes.
Q. You and two other men were engaged in taking down a derrick and rigging which you had used to remove the ice from the boat, at that time?
A. Yes.
Q. Was this man Stewart engaged in helping you?
A. Those men were up on this rigging but higher up, but he stood on the platform and threw this block to me and said, "Take that too."
Q. Was that the only thing you saw him do in connection with the rigging?
A. That's all.
Q. Did you ask him to help you?
A. No.
Q. Did you hear Mr. Normandeau have any conversation with Mr. Stewart about not helping to take down the rigging?
A. No, sir.
Q. You heard no conversation?
A. No, sir.

Commr. Archer: Any further testimony?
Mr. Neal: No further testimony except the employer wants to offer in evidence the fact it is a New Jersey Corporation. I would like not to leave the certificate here.
Commr. Archer: Just assert it.
Mr. Neal: It is a fact and I offer proof of that by bringing in the certificate of the Secretary of State and the articles of incorporation.
Commr. Archer (looking at the certificate): This being the certificate:

STATE OF NEW YORK:

Office of the Secretary of State.

It is hereby certified that the Knickerbocker Ice Co., which appears from the papers filed in this office on the 4th day of
32 May, 1911, to be a foreign stock corporation, organized and existing under the laws of the State of New Jersey, has complied with all requirements of law to do business in this State, and the business of such corporation to be carried on in this State is such as may be lawfully carried on by a corporation incorporated under the laws of this State for such or similar business.

Witness my hand and seal of office of the Secretary of State, at the City of Albany, this 4th day of May, 1911.

JOSEPH E. PIDGEON,
Second Deputy Secretary of State.

Mr. Neal: It appears the particular state of incorporation is New Jersey, without getting any more of this in the record.

Commr. Archer: Yes, it so appears.

Mrs. Lillian Stewart: I just want to say a few words. I saw them loading ice on four ice wagons at four o'clock that afternoon.

Commr. Archer: Saw him?

Mrs. Stewart: The men on the boat. I saw the men on the boat; I was coming from Jersey, from the American Can Co. with my salary at 4 o'clock and I didn't know my husband was drowned, and there was four ice wagons there being loaded, and my husband must have been drowned then, because I didn't hear anything of it until half past six that night. I went there at night to see if I could see the Captain of the boat that he was drowned from and they told me that boat had gone and another boat had come in its
33 place and I couldn't get any information of the man and they said my husband had fallen from a certain spot and pointed out that spot to me, and he was not standing on this place where this man said he was standing.

Commr. Archer: Where was he?

Mrs. Stewart: There is a slide where they unload the ice from the dock and this slide comes from the bridge of the boat to the dock and slides on, and my husband must have been unloading it there because it was right above the spot they claimed he fell from; and another thing I want to say, he must have been stunned to be drowned because he was a very able swimmer and otherwise his physical condition while he had hip disease as a boy, he was a very strapping man, he was strong and a good worker, I have no doubt of that. He was always very careful of himself.

Commr. Archer: Award as recommended.

Mr. Neal: Just a moment. The record isn't complete. I object to an award on the grounds, first, it doesn't appear the man suffered his accident in the course of his employment; also on the

ground it appears he was engaged in a maritime pursuit and that under Article 3, Section 2 of the Federal Constitution, it being a case of a maritime jurisdiction, that the courts have exclusive jurisdiction. On the further ground the amendments to Sections 24 and 256 of the judicial code by Congress enacted, and signed by the President on October 6, 1917, is not constitutional and in violation of the Constitution of the U. S. and made in excess of the
34 powers of Congress under the powers of the Constitution.

Commr. Archer: Award as recommended. My conception of the law with respect to prohibitive orders, that is violation of prohibitive orders, is as follows: Namely, prohibitive orders are divided in two classes, those which limit the scope of employment and those which limit the employment within the scope of employment. A violation of the former takes an employee outside of his employment, a violation of the latter does not. This clearly falls under the latter class and does not deprive the claimant of compensation.

Mr. Neal: I don't particular- disagree with that. Do you want to make a statement as to whether he was engaged in a maritime occupation?

Commr. Archer: I think he was.

Mr. Neal: The reason I ask that is because somebody will raise the question whether Congress exceeded its authority and what I want to do is to decide within the next ten days whether we will take the question up. You see, Mrs. Stewart, we have thirty days within which to appeal, but I will decide within ten days whether we will take the question up or whether we will pay the claim.

Commr. Archer: All right, award as recommended. (To Mrs. Stewart:) You see the law gives them that right and they are within their rights when they do that. However, you will hear from them very shortly and you will get a notice from us telling you
35 how much is due you and when you receive that notice take it to the office of the company for payment.

September 24th, 1918.

I hereby certify that the foregoing is a true and correct transcript of the testimony taken at the above hearing before the State Industrial Commission on September 18th, 1918.

LEO B. SIEGEL,
Hearing Stenographer, State Industrial Commission.

Notice of Hearing.

State Industrial Commission.

Principal Office: The Capitol, Albany, N. Y.

New York Office: 230 Fifth Avenue.

J. M.

Division of Claims.

Case No. 350055 N. Y.
Case of William M. Stewart,

Mrs. Lillian E. Stewart (Claimant), 1829 Amsterdam Ave., City: Knickerbocker Ice Co. (Employer), 1480 Broadway, City:

Instructions.

If you desire to file objection to this disposition of your case please do so in writing on the back of this sheet. Then mail it before the day of the hearing to the State Industrial Commission, 230
36 Fifth Avenue, New York City. Bureau of Workmen's Compensation.

You are hereby notified that this claim seemingly is complete and that it will be summarized and presented to the Commission on Wednesday, Sept. 18, 1918, at 10 o'clock at No. 230 Fifth Avenue, New York, Room 2015.

The Division of Claims will recommend that an award be made of $76.90, being for 5 weeks at $11.54 per week; bi-weekly $30.76, Funeral Expenses $95.50, and that the case be closed.

Date this notice mailed, Sept. 13, 1918, by J. M.

NOTE.—For the first sixty days after injury the employer shall furnish medical, surgical and hospital services and medicines to his injured workmen. Injured workmen must request this service of the employer in writing, otherwise the injured workmen may have to pay his own bills. If he requests it in writing the employer will have to furnish medical service. The request is contained in the first notice of injury. The injured workman must give his employer notice of injury in writing within ten days after disability. If the employer has insured the medical services in the State Insurance Fund, then the bills for such services will be paid out of the State Insurance Fund and not by the employer.

The law provides that no compensation shall be paid for the first fourteen days of disability unless the injury results in a disability of more than forty-nine days' duration. In such cases compensation will then be paid for the first two weeks also. Compensation
37 is paid upon the basis of two-thirds of the average weekly wage. The following method of arriving at the average weekly wage is prescribed by law: Multiply daily wage by 300 and

divide by 52. This will give you the weekly wage, two-thirds of which is the compensation rate in disability cases.

STATE INDUSTRIAL COMMISSION,
JOHN MITCHELL,
Chairman.

Notice of Award in Death Cases.

State Industrial Commission.

Principal Office: The Capitol, Albany, N. Y.

New York Office: 230 Fifth Avenue.

G. O. R.
Case No. 350055 N. Y.

Date Sept. 25, 1918.

William M. Stewart, Deceased.

To Knickerbocker Ice Co., Employer, 1480 Broadway, N. Y. C., and Mrs. Lillian E. Stewart, Claimant, 1829 Amsterdam Ave., N. Y. C., and Self Insurance Carrier:

This is notice that at a meeting of the State Industrial Commission held 9/18/18 a decision and award of compensation was made in the above case as follows:

38 $6.93 per week being 30% of $23.08 (average weekly wages) to be paid to widow, born 2/1/78, during period of widowhood.

$1.69 per week being 7 1-3% of $23.08 to William M., son, born 2/11/04.

$1.69 per week being 7 1-3% of $23.08 to Alida, daughter, born 8/3/05.

$1.69 per week being 7 1-3% of $23.08 to William M., son, born 1/14/08.

$1.69 per week being 7 1-3% of $23.08 to Lenore, daughter, born 11/26/09.

$1.69 per week being 7 1-3% of $23.08 to Lillian, daughter, born 3/30/12.

The employer and insurance carrier is hereby directed in accordance with the provisions of the Workmen's Compensation Law, to pay the above award in the following manner:

To Lillian E. Stewart, 1829 Amsterdam Ave., N. Y. C., $100 for funeral expenses.

To Lillian E. Stewart, 1829 Amsterdam Ave., N. Y. C., in sums as follows: $76.90 at once for period from 8/3/18 (date of death to 9/7/18, and thereafter $30.76 bi-weekly instalments periodically in accordance with the method of payment of wages of the employees at the time of injury or death.

The above copy of the decision and award is sent to you pursuant to sections 20 and 28 of the Compensation Law.

Yours truly,

STATE INDUSTRIAL COMMISSION,
JOHN MITCHELL,
Chairman.

(NOTE.—Correspondence should be addressed to the New York Office.)

To the Claimant: Call at the office of the insurance carrier given above to collect the first instalments of award due at which time arrangements may be made to receive compensation payments by mail or otherwise.

Compensation in death cases is based on weekly wages obtained as follows: Multiply the daily wage by 300 and divide by 52.

Section 16.—Death benefits.—If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

1. Reasonable funeral expenses, not exceeding one hundred dollars.

2. If there be a surviving wife (or dependent husband), and no child of the deceased under the age of eighteen years, to such wife (or dependent husband) thirty per centum of the average wages of the deceased during widowhood (or dependent widowerhood), with two years' compensation in one sum, upon remarriage; and if there be surviving child or children of the deceased under the age of eighteen years, the additional amount of ten per centum of such wages for each such child until the age of eighteen years; in case of the subsequent death of such surviving wife (or dependent husband), any surviving child of the deceased employee, at the time under eighteen years of age, shall have his compensation increased to fifteen per centum of such wages, and the same shall be payable until he shall reach the age of eighteen years; provided that the total amount payable shall in no case exceed sixty-six and two-thirds per centum of such wages. The commission may in its discretion require the appointment of a guardian for the purpose of receiving the compensation of a minor child. In the absence of such a requirement by the commission the appointment of a guardian for such purposes shall not be necessary. (Subd. 2 am'd by L. 1914, ch. 316; and L. 1916, ch. 622.)

3. If there be surviving child or children of the deceased under the age of eighteen years, but no surviving wife (or dependent husband), then for the support of each such child until the age of eighteen years, fifteen per centum of the wages of the deceased, provided that the aggregate shall in no case exceed sixty-six and two-thirds per centum of such wages.

4. If there be no surviving wife (or dependent husband) or child under the age of eighteen years, or if the amount payable to surviving wife (or dependent husband) and to children under the age of eighteen years shall be less in the aggregate than sixty-six and two-thirds per centum of the average wages of the deceased, then for the support of grandchildren or brothers and sisters under the age of eighteen years, if dependent upon the deceased at the time of the accident, fifteen per centum of such wages for the support of each such person until the age of eighteen years; and for the support of each parent, or grandparent, of the deceased if dependent upon him at the time of the accident, twenty-five per centum of such wages during such dependency. But in no case shall the aggregate
41 amount payable under this subdivision exceed the difference between sixty-six and two thirds per centum of such wages, and the amount payable as hereinbefore provided to surviving wife (or dependent husband), or for the support of surviving child or children.

Any excess of wages over one hundred dollars a month shall not be taken into account in computing compensation under this section. All questions of dependency shall be determined as of the time of the accident. (Subd. 4, am'd by L. 1916, ch. 622.)

Corrected Notice of Award in Death Cases.

State Industrial Commission.

Principal Office: The Capitol, Albany, N. Y.

New York Office: 230 Fifth Avenue.

G. O. R.

Case No. 350055 N. Y.

Date, Sept. 28, 1918.

William M. Stewart, Deceased.

To Knickerbocker Ice Co., Employer, 1480 Broadway, N. Y. C., and Mrs. Lillian E. Stewart, Claimant, 1829 Amsterdam Avenue, N. Y. C., and Self Insurance Carrier.

Corrected Notice.

This is notice that at a meeting of the State Industrial Commission held 9/18/18, a decision and award of compensation was
42 made in the above case as follows:

$6.93 per week being 30% of $23.08 (average w'kly wages) to be paid to widow, born 2/1/78 during period of widowhood.
$1.69 per week being 7 1/3% of $23.08 to Beatrix, daughter, born 2/11/04.

$1.69 per week being 7 1/3% of $23.08 to Alida, daughter, born 8/3/05.
$1.69 per week being 7 1/3% of $23.08 to William M., son, born 1/14/08.
$1.69 per week being 7 1/3% of $23.08 to Lenore, daughter, born 11/26/09.
$1.69 per week being 7 1/3% of $23.08 to Lillian, daughter, born 3/30/12.

The employer and insurance carrier is hereby directed in accordance with the provisions of the Workmen's Compensation Law, to pay the above award in the following manner:

To Lillian E. Stewart, 1829 Amsterdam Ave., N. Y. C., $95.50 for funeral expenses.

To Lillian E. Stewart, 1829 Amsterdam Ave., N. Y. C., in sums as follows: $76.90 at once for period from 8/3/18 (date of death) to 9/7/18, and thereafter $30.76 bi-weekly instalments periodically in accordance with the method of payment of wages of the employees at the time of injury or death.

The above copy of the decision and award is sent to you pursuant to sections 20 and 23 of the Compensation Law.

Yours truly,

STATE INDUSTRIAL COMMISSION,
JOHN MITCHELL,
Chairman.

43 (NOTE.—Correspondence should be addressed to the New York office.)

To the claimant: Call at the office of the insurance carrier given above to collect the first instalment of award due at which time arrangements may be made to receive compensation payments by mail or otherwise.

Compensation in death cases is based on weekly wages obtained as follows: Multiply the daily wage by 300 and divide by 52.

Section 16.—Death benefits.—If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

1. Reasonable funeral expenses, not exceeding one hundred dollars.

2. If there be a surviving wife (or dependent husband), and no child of the deceased under the age of eighteen years, to such wife (or dependent husband) thirty per centum of the average wages of the deceased during widowhood (or dependent widowerhood), with two years' compensation in one sum, upon remarriage; and if there be surviving child or children of the deceased under the age of eighteen years, the additional amount of ten per centum of such wages for each child until the age of eighteen years; in case of the subsequent death of such surviving wife (or dependent husband), any surviving child of the deceased employee, at the time under eighteen years of

age, shall have his compensation increased to fifteen per centum of such wages, and the same shall be payable until he shall reach the age of eighteen years; provided that the total amount payable shall in no case exceed sixty-six and two-thirds per centum of such wages. The commission may in its discretion require the appointment of a guardian for the purpose of receiving the compensation of a minor child. In the absence of such a requirement by the commission the appointment of a guardian for such purposes shall not be necessary. (Subd. 2 am'd by L. 1914, ch. 316; and L. 1916, ch. 622.)

3. If there be surviving child or children of the deceased under the age of eighteen years, but no surviving wife (or dependent husband), then for the support of each such child until the age of eighteen years, fifteen per centum of the wages of the deceased, provided that the aggregate shall in no case exceed sixty-six and two-thirds per centum of such wages.

4. If there be no surviving wife (or dependent husband) or child under the age of eighteen years, or if the amount payable to surviving wife (or dependent husband) and to children under the age of eighteen years shall be less in the aggregate than six-six and two-thirds per centum of the average wages of the deceased, then for the support of grandchildren or brothers and sisters under the age of eighteen years, if dependent upon the deceased at the time of the accident, fifteen per centum of such wages for the support of each such person until the age of eighteen years; and for the support of each parent, or grandparent, of the deceased if dependent upon him at the time of the accident, twenty-five per centum of such wages during such dependency. But in no case shall the aggregate amount payable under this subdivision exceed the difference between sixty-six and two-thirds per centum of such wages, and the amount payable as hereinbefore provided to surviving wife (or dependent husband), or for the support of surviving child or children.

Any excess of wages over one hundred dollars a month shall not be taken into account in computing compensation under this section. All questions of dependency shall be determined as of the time of the accident. (Subd. 4, am'd by L. 1916, ch. 622.)

Conclusion of Fact, Ruling of Law and Award.

State Industrial Commission.

Death Case No. 350,055.

In the Matter of the Claim for Compensation under the Workmen's Compensation Law Made by LILLIAN E. STEWART, Widow of William M. Stewart, Deceased, on Behalf of Herself and Infant Children, on Account of the Death of William M. Stewart

against

KNICKERBOCKER ICE COMPANY, Employer and Self Insurer.

This claim came on for hearing before State Industrial Com-
46 mission at its office, No. 230 Fifth Avenue, New York City, on September 18, 1918, and an award of compensation was made as hereinafter set forth. At said hearing, the attorney for the employer and self-insurer raised the question of the constitutionality of the Amendment by Congress of Sections 24 and 256, of the Judicial Code, contending that said amendment was in violation of the Constitution of the United States, and made in excess of the powers of Congress under the powers of the Constitution.

Appearances:

Robert W. Bonynge, Esq., Counsel to State Industrial Commission.
Bertrand L. Pettigrew, Esq., Attorney for Claimant.
Frank R. Savidge, Esq., (Cleland R. Neal, Esq., of Counsel), Attorney for Employer and Self-Insurer.

All the evidence submitted before the Commission having been heard and duly considered, the Commission makes its Conclusions of Fact, Ruling of Law and Award, as follows:

Conclusions of Fact.

1. On August 3, 1918, the day when William M. Stewart received the injuries which resulted in his death, he resided at No. 1829 Amsterdam Avenue, New York City and was employed by Knickerbocker Ice Company, a New Jersey Corporation, engaged in the business of ice storage and ice distribution, as well as in the operation of barges on the Hudson River for the purpose of distributing
47 ice from ice houses on the upper Hudson within the State of New York to points in New York City. William M. Stewart was employed as a barge man on one of said barges.

2. On August 3, 1918, William M. Stewart was working for his employer and while engaged in the regular course of his employment as a barge man, and while standing on a dock or pier at the corner of 95th Street and North River, New York City, participating in the dismantling of a derrick and rigging which had been used to remove

ice from the barge, he lost his balance and fell backward into the river and was drowned.

3. The injuries which resulted in the death of William M. Stewart were accidental injuries, and arose out of and in the course of his employment.

4. The average weekly wage of William M. Stewart was the sum of $23.08.

5. Due notice of death was given to the employer.

6. William M. Stewart left him surviving Lillian E. Stewart, widow, aged 40 years; Beatrix Stewart, daughter, aged 14 years; Alida Stewart, daughter, aged 13 years; William M. Stewart, son, aged 10 years; Lenore Stewart, daughter, aged 9 years, and Lillian Stewart, daughter, aged 6 years, the claimants herein.

Ruling of Law.

This claim comes within the provisions of Chapter 67 of the Consolidated Laws, being Chapter 816 of the Laws of 1913, as re-enacted and amended by Chapter 41 of the Laws of 1914, and amended by Chapter 316 of the Laws of 1914, and as further amended by the Laws of 1915, 1916, 1917 and 1918, known as the Workmen's Compensation Law.

Award.

48 Award of compensation is hereby made against Knickerbocker Ice Company, Employer and Self-Insurer, to the widow and minor children of William M. Stewart, deceased employee, as follows: to Lillian E. Stewart, widow, aged 40 years, at the rate of $6.93 weekly during widowhood, with two years' compensation in one sum upon re-marriage; to Beatrix Stewart, daughter, aged 14 years; to Alida Stewart, daughter, aged 13 years; to William M. Stewart, son, aged 10 years; to Lenore Stewart, daughter, aged 9 years; and to Lillian Stewart, aged 6 years, at the rate of $1.69 weekly to each until they shall respectively arrive at the age of 8 years; and in case of the subsequent death of Lillian E. Stewart, widow, then the payments to the children shall be proportionately increased until each child shall be receiving a sum equal to 15 per cent. of the above mentioned average weekly wage, but in no event shall the total amount payable exceed 66 2-3 per centum of such wages; and if the payment to the widow shall otherwise cease, or if the payments to any child by operation of law or otherwise, then the payments to each of the remaining children shall be increased to 10 per cent. of the said average weekly wage; and to Lillian E. Stewart in the sum of $95.50 on account of the funeral expenses of William M. Stewart, deceased.

Dated, September 18, 1918.

STATE INDUSTRIAL COMMISSION.
JAMES M. LYNCH,
EDW. P. LYON,
HENRY D. SAYER,
Commissioners.

49 *Certification of Record.*

I, William S. Coffey, Secretary of the State Industrial Commission, do hereby certify that I have compared the foregoing papers (except the Statement Under Rule 41) with the respective originals thereof on file in the office of the State Industrial Commission, and that the same are true and correct copies of said originals, and of the whole thereof, and that said papers constitute all of the papers and proceedings herein, including the evidence, which were before said State Industrial Commission in relation to the foregoing claim.

In Witness whereof, I hereunto set my hand and the official seal of the State Industrial Commission on the 18th day of November, 1918.

[SEAL.] W. S. COFFEY,
Secretary State Industrial Commission.

50 *Order of Chairman to File With the Appellate Division.*

Upon the foregoing certification of this record, it is

Ordered, that the foregoing printed record is hereby settled, as and for the record on appeal herein, and is hereby ordered filed in the office of the Clerk of the Appellate Division of the Supreme Court, Third Department.

Dated, New York, N. Y., Nov. 18, 1918.

HENRY D. SAYER,
State Industrial Commissioner.

51 *Order of Affirmance of Appellate Division.*

At a Term of the Appellate Division of the Supreme Court in and for the Third Department, Held at the Court House in the City of Albany, N. Y., Commencing on the 7th Day of January, 1919.

Present: Hon. John M. Kellogg, President Justice;
" George F. Lyon,
" John Woodward,
" A. V. S. Cochrane,
" Henry T. Kellog, Associate Justices.

In the Matter of the Claim of LILLIAN E. STEWART for Compensation for Herself and Children for the Death of William M. Stewart, under the Workmen's Compensation Law,

against

KNICKERBOCKER ICE COMPANY, Employer-Appellant.

The above named Knickerbocker Ice Company having appealed from the award of the State Industrial Commission entered in the

office of said Commission on the 18th day of September, 1918,
52 whereby compensation was awarded to the widow and minor children of William M. Stewart, deceased employee, as follows: to Lillian E. Stewart, widow, aged 40 years, at the rate of $6.93 weekly during widowhood, with two years' compensation in one sum upon re-marriage; to Beatrix Stewart, daughter, aged 14 years; to Alida Stewart, daughter, aged 13 years; to William M. Stewart, son, aged 10 years; to Lenore Stewart, daughter, aged 9 years, and to Lillian Stewart, aged 6 years, at the rate of $1.69 weekly each until they shall respectively arrive at the age of 18 years; and in case of the subsequent death of Lillian E. Stewart, widow, then the payments to the children shall be proportionately increased until each child shall be receiving a sum equal to 15 per cent. of the above mentioned average weekly wage, but in no event shall the total amount payable exceed 66 2-3 per centum of such wages; and if the payments to the widow shall otherwise cease, or if the payments to any child cease by operation of law or otherwise, then the payments to each of the remaining children shall be increased 10 per cent. of the said average weekly wage; and to Lillian E. Stewart in the sum of $95.50 on account of the funeral expenses of William M. Stewart, deceased; and said appeal having come on to be heard in this court, and having been argued by Frank R. Savidge, Esq., of counsel for the appellant, and E. C. Aiken, Deputy Attorney General, for the State Industrial Commission, and due deliberation having been had thereon;

Now, on motion of Charles D. Newton, Attorney General, attorney for the State Industrial Commission, it is

53 Ordered, that the award of the State Industrial Commission appealed from be and the same hereby is unanimously affirmed.

A Copy,
[SEAL.] JOSEPH H. HOLLANDS,
Clerk.

Order of Affirmance of State Industrial Commission.

Before the State Industrial Commission.

In the Matter of the Claim of LILLIAN E. STEWART, for Compensation for Herself and Children for the Death of William M. Stewart, under the Workmen's Compensation Law,

against

KNICKERBOCKER ICE COMPANY, Employer and Self Insurer.

The above named Knickerbocker Ice Company, employer and self insurer having appealed to the Appellate Division of the Su-
54 preme Court in and for the Third Judicial Department, from the award and decision of the State Industrial Commission, made and entered herein on the 18th day of September, 1918, whereby compensation was awarded the above named Lillian E. Stewart, widow, aged 40 years, at the rate of $6.93 weekly during

widowhood, with two years' compensation in one sum upon remarriage, to Beatrix, daughter, aged 14 years; to Alida, daughter, aged 13 years; to William M., son, aged 10 years, to Lenore Stewart, daughter, aged 9 years, and to Lillian, daughter, aged 6 years, at the rate of $1.69 weekly each until they shall respectively arrive at the age of 18 years; and in case of the subsequent death of Lillian E. Stewart, widow, then the payments to the children shall be proportionately increased until each child shall be receiving a sum equal to 15% of the above mentioned average weekly wage, but in no event shall the total amount payable exceed 66 2-3% of such wages; and if the payments to the widow shall otherwise cease, or if the payments to any child cease by operation of law or otherwise, then the payments to each of the remaining children shall be increased 1% of the said average weekly wage; and to Lillian E. Stewart in the sum of $95.50 on account of the funeral expenses of William M. Stewart, deceased; and said appeal having been duly heard by said court, and the Appellate Division of the Supreme Court having at a term thereof commencing on the 7th day of January, 1919, unanimously affirmed the award and decision heretofore made by the State Industrial Commission, and the papers on appeal herein together with a certified copy of said order of the Appellate Division having been duly filed; it is

Ordered, that the order of the Appellate Division be and the same hereby is made the order of the State Industrial Commission,
55 and the award heretofore made herein be and the same hereby is affirmed with interest from September 18, 1918.

Dated, New York, January 31st, 1919.

W. S. COFFEY,
Secretary.

Notice of Appeal to the Court of Appeals.

The State Industrial Commission.

Case No. 350,055.

Before State Industrial Commission, Respondent.

In the Matter of the Claim of LILLIAN E. STEWART, for Compensation for Herself and Children for the Death of William M. Stewart, under the Workmen's Compensation Law, Claimant-Respondent,

against

KNICKERBOCKER ICE COMPANY, Employer-Appellant.

Notice of Appeal to the Court of Appeals.

Please take notice, that pursuant to Section 190, subdivision 1, of the Code of Civil Procedure of the State of New York, the
56 above-named Knickerbocker Ice Company, Employer, hereby appeals to the Court of Appeals of the State of New York, from the order entered in the above-entitled matter in the office of

the Clerk of the Appellate Division, Third Judicial Department, on the 21st day of January, 1919, affirming the award of the Workmen's Compensation Commission of September 18th, 1918, in favor of the claimant-respondent and against the employer-appellant, and also from the order of the State Industrial Commission, dated January 31st, 1919, affirming said award and making the above-mentioned order of the Appellate Division the order of the State Industrial Commission, and the appellant appeals from each and every part and provision of each of said orders.

Dated, New York, March 14, 1919.

Yours, etc.,

FRANK R. SAVIDGE,
Attorney for Appellant, Knickerbocker Ice Company,
45 Cedar Street, Borough of Manhattan, New York, N. Y.

57 To—

Hon. Charles D. Newton, Attorney General of the State of New York, Albany, N. Y.

State Industrial Commission, Albany, N. Y., and No. 230 Fifth Avenue, New York City, N. Y.

Robert W. Bonynge, Esq., Counsel for State Industrial Commission, No. 230 Fifth Avenue, New York City, N. Y.

Mrs. Lillian E. Stewart, Claimant, No. 1829 Amsterdam Avenue, New York City, N. Y.

Joseph H. Hollands, Esq., Clerk of the Appellate Division, Third Judicial Department, Albany, N. Y.

58 *Affidavit of No Opinion.*

Court of Appeals of the State of New York.

Before Industrial Commission, Respondent.

Case No. 350,055.

In the Matter of the Claim of LILLIAN E. STEWART, for Compensation for Herself and Children for the Death of William M. Stewart, under the Workmen's Compensation Law, Claimant-Respondent.

against

KNICKERBOCKER ICE COMPANY, Employer-Appellant.

STATE OF NEW YORK,
City and County of New York, ss:

Cleland R. Neal, being duly sworn, says that he is an attorney in the office of Frank R. Savidge, the attorney for the appellant herein.

That no opinion was delivered or written by the Appellate Di-
59 vision, Third Judicial Department, upon the decision of the appeal from the award of the State Industrial Commission herein.

CLELAND R. NEAL.

Sworn to before me this 25th day of March, 1919.
SIMON SVERDLIK,
Commissioner of Deeds, N. Y. City.

Term expires November 27, 1919.
County Clerk's Nos. New York 515.
Bronx 62, Kings 308A, Queens 3555,
Register's Nos. New York 19195.
Bronx 9065, Kings 9133.

60 *Stipulation and Waiver of Certification.*

It is hereby stipulated that the foregoing are true copies of the original notice of appeal, papers, records, evidence and proceedings of every nature on file in the office of the State Industrial Commission (formerly the State Workmen's Compensation Commission), as settled in the above entitled matter, together with the order of affirmance of the Appellate Division, the order of affirmance of the State Industrial Commission, and the notice of appeal to the Court of Appeals; certification thereof by the Clerk is hereby expressly waived.
Dated, New York, March 26, 1919.

CHARLES D. NEWTON,
Attorney General of the State of New York.

ROBERT W. BONYNGE,
Counsel for State Industrial Commission.

FRANK R. SAVIDGE,
Attorney for Knickerbocker Ice Company, Employer-Appellant.

61 Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 29th Day of April, in the Year of our Lord one thousand nine hundred and nineteen, before the Judges of said Court.

Witness, The Hon. Frank H. Hiscock, Chief Judge, presiding.
R. M. BARBER,
Clerk.

Remittitur April 30, 1919.

62 In the Matter of the Claim of LILLIAN E. STEWART for Compensation, &c.

Be it Remembered, That on the 3rd day of April in the year of our Lord one thousand nine hundred and nineteen Knickerbocker Ice Company the appellant in this cause, came here into the Court of Appeals, by Frank R. Savidge its attorney, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the Third Judicial Department. And State Industrial Commission the respondent in said cause, afterwards appeared in said Court of Appeals by Charles D. Newton, Attorney General, attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid are hereunto annexed.

63 Whereupon, The said Court of Appeals having heard this cause argued by Mr. Frank R. Savidge of counsel for the appellant, and by Mr. E. C. Aiken of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed with costs.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the Appellate Division of the Supreme Court, there to be proceeded upon according to law.

Therefore, It is considered that the said order be affirmed with costs.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Appellate Division, Third Judicial Department, before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Appellate Division before the Justices thereof, &c.

R. M. BARBER,
Clerk of the Court of Appeals of the State of New York.

Court of Appeals, Clerk's Office.

ALBANY, April 30, 1919.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

R. M. BARBER,
Clerk.

64 STATE OF NEW YORK,
Court of Appeals,
State Reporter's Office, ss:

I, J. Newton Fiero, Reporter of the Court of Appeals of the State of New York, do hereby certify that I have compared the annexed copy of opinion in the case of Matter of Claim of Lillian E. Stewart, Respondent, v. Knickerbocker Ice Company, Appellant (State Industrial Commission, Respondent), decided by the Court of Appeals on the 29th day of April, 1919, with the official opinion rendered in such case, and I further certify that the same is a true and correct copy of said opinion and of each and every part thereof.

In witness whereof, I have hereunto affixed my signature as Reporter of the Court of Appeals, at the City of Albany, in the State of New York, this 17 day of July, 1919.

[Seal Court of Appeals, State of New York.]

J. NEWTON FIERO,
As Reporter of the Court of Appeals of the State of New York.

Attest:
[L. S.] R. M. BARBER,
Clerk of the Court of Appeals.

STATE OF NEW YORK,
Court of Appeals:

I, Frank H. Hiscock, Chief Judge of the Court of Appeals of the State of New York, the highest Appellate Court and Court of Record in and for said State, do hereby certify that Richard M. Barber is the clerk of said court, having custody of the seal of said court and of the decisions, minutes and records thereof, and that J. Newton Fiero is the official reporter of said court, having custody of the official opinions, written and handed down by said court and the members thereof, and of the official publication and reports thereof; and I further certify that the attestation and authentication, by said clerk and said reporter of the annexed copy of the official opinion rendered in the case of Matter of Claim of Lillian E. Stewart, Respondent, v. Knickerbocker Ice Company, Appellant (State Industrial Commission, Respondent), decided by the said Court of Appeals on the 29th day of April, 1919, is in due form and sufficient under the laws of the State of New York and the rules and practice of the said Court of Appeals; that the seal imprinted thereon is the true and genuine seal of the said Court of Appeals, and that the signature of Richard M. Barber, as clerk of said court, appended thereto is the true and genuine signature of said Richard M. Barber, and the signature of J. Newton Fiero, as reporter of said court, appended thereto is the true and genuine signature of said J. Newton Fiero.

In witness whereof, I have hereunto subscribed my official signature at the Chambers of said court at the Court of Appeals Hall, in the City of Albany and State of New York, on the 28 day of July, in the year one thousand nine hundred and nineteen.

FRANK H. HISCOCK,
As Chief Judge of the Court of Appeals of the State of New York.

65 In the Matter of the Claim of LILLIAN E. STEWART, Respondent,

v.

KNICKERBOCKER ICE COMPANY, Appellant.

State Industrial Commission, Respondent.

(Decided April 29, 1919.)

Appeal from an order of the Appellate Division of the Supreme Court in the third judicial department entered January 21, 1919, affirming an award of the state industrial commission, made under the Workmen's Compensation Law.

Frank R. Savidge for appellant.
Charles D. Newton, Attorney General (E. C. Aiken of counsel) for respondent.

HISCOCK, *Ch. J.:*

This is an appeal from an affirmance of an award made under the Workmen's Compensation Act for injuries received by one Stewart while engaged in helping to unrig a derrick on one of the defendant's barges. It is conceded that the work in which the injured man was engaged was of a maritime nature and upon that conceded fact the argument is made that our Workmen's Compensation Act is not applicable because it is in conflict with the Constitution of the United States and with the Federal statute passed thereunder. The attempt is made to support this argument almost exclusively by reference to the decision of the United States Supreme Court in Southern Pacific Co. v. Jensen (244 U. S. 205.)

The Jensen case was one involving the applicability of our Workmen's Compensation Act to injuries received by a stevedore while engaged in helping to unload a vessel belonging to the Southern Pacific Railroad Company. The two questions which were considered by Judge Miller in his opinion (215 N. Y. 514) were the ones whether our act was unconstitutional as depriving employers of property without due process of law, and second, whether it was in conflict with the Federal Constitution because attempting directly to regulate or impose a tax or burden on interstate or foreign commerce, the Southern Pacific Company, owner of the vessel, being concededly engaged in such commerce. He reached the conclusion,

concurred in by all members of the court voting, that the act was not vulnerable in either of those respects. When the case reached the Supreme Court, however, a new question was argued and it was held by a closely divided vote that inasmuch as the injured man was engaged in maritime work, our Compensation Act was violative of the United States Constitution as embodied in the Federal statutes adopted thereunder conferring jurisdiction in such a case upon the Federal courts.

66 In the prevailing opinion it was, amongst other things, in substance, written that the Constitution extended the judicial power of the United States "To all cases of admiralty and maritime jurisdiction" and conferred upon the Congress power "to make all laws which may be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the government of the United States or in any department or officer thereof;" (p. 214) that under these provisions of section 9 of the Judiciary Act of 1789 the District Courts of the United States had been given "exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction; * * * saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it;" (p. 215) and that this grant had been continued under the Judicial Code, sections 24 and 256; that the remedy given by our compensation statute was of a character wholly unknown to the common law, incapable of enforcement by the ordinary processes of any court and therefore not saved to suitors from the grant of exclusive jurisdiction under the foregoing statute. Proceeding upon these fundamental principles it was held that our act was in conflict with the Constitution as expressed in these statutes.

It was, however, recognized in the prevailing opinion that the general maritime law under which jurisdiction was reserved to the Federal courts might be changed, modified or affected by state legislation and that it was impossible to define with exactness just how far this might be done. The limitation which was placed upon this power was defined in the general proposition that "no such legislation (by the State affecting maritime jurisdiction) is valid if it contravenes the essential purpose expressed by an Act of Congress or works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations." (p. 216.)

The enactment by the states of Workmen's Compensation Acts has become very general. Public sentiment has justified and demanded the enactment of these statutes as offering speedy and simple relief to injured workmen and their dependents and as being a positive and decided step in the interest of industrial welfare and of better relations between employers and employees. In recognition of this widespread public sentiment and realizing it is desirable that the states should be given power to enact and administer such statutes as these, the Congress, since the decision of the Jensen case, has very materially modified the Federal statute under which it was

held that our decision in the latter case could not stand. It has amended this statute so that it now saves from the jurisdic-
67 tion of the Federal courts "to suitors in all cases the right of a common-law remedy when the common law is competent to give it, and to claimants the rights and remedies under the workmen's compensation law of any state."

In view of the close division of opinion amongst the learned justices of the Supreme Court, involved in the decision of the Jensen case, and in view of the concession made in the prevailing opinion that it was difficult to determine just how far the jurisdiction of the Federal courts in maritime matters might be limited or affected by such legislation, we think that we are justified in assuming that the Congress has acted within its powers under the Constitution when, after due consideration, it has confided to the states the power to enact and enforce Workmen's Compensation Acts in respect of injuries received in the course of maritime employment. We think that it would be altogether an unjustifiable concession of lack of state jurisdiction in this field of compensation to injured workmen or their dependents, if, after this amendment by the Congress, we should hold that our statute was unconstitutional.

The order should be affirmed, with costs.

Chase, Hogan, Cardozo, Pound, McLaughlin and Andrews, JJ., concur.

Order affirmed.

[Endorsed:] Matter of Stewart. Hiscock, Ch. J.

[Endorsed:] Supreme Court of the United States. Knickerbocker Ice Company, Plaintiff-in-Error, vs. Lillian E. Stewart, Defendant-in-Error. Copy. Certified Copy Opinion of New York Court of Appeals. Frank R. Savidge, Attorney for Plaintiff-in-Error, 45 Cedar Street, Borough of Manhattan, New York City.

68 At a Term of the Appellate Division of the Supreme Court, Held in and for the Third Department, at the Court House, in the City of Albany, N. Y., Commencing on the 6th Day of May, 1919.

Present:

Hon. John M. Kellogg, Presiding Justice.
Hon. George F. Lyon,
Hon. John Woodward,
Hon. A. V. S. Cochrane,
Hon. Henry T. Kellogg, Associate Justices.

In the Matter of the Claim of LILLIAN E. STEWART, for Compensation for Herself and Children for the Death of William M. Stewart, under the Workmen's Compensation Law,

against

KNICKERBOCKER ICE COMPANY, Employer, Appellant.

The above named Knickerbocker Ice Company having appealed from the order of the Appellate Division of the Supreme Court, in and for the Third Department, made at a term commencing on the 7th day of January, 1919, which affirmed an award of the State Industrial Commission entered in the office of said Commission on the 18th day of September, 1918, whereby compensation was awarded to the widow and minor children of William M. Stewart, deceased employee, as follows: to Lilliam E. Stewart, widow, aged 40 years, at the rate of $6.93 weekly during the widowhood, with two years' compensation in one sum upon remarriage; to Beatrix Stewart, daughter, aged 14 years; to Alida Stewart, daughter, aged 13 years; to William M. Stewart, son, aged 10
69 years; to Lenore Stewart, daughter, aged 9 years, and to Lillian Stewart, aged 6 years, at the rate of $1.69 weekly each until they shall respectively arrive at the age of 18 years; and in case of the subsequent death of Lillian E. Stewart, widow, then the payments to the children shall be proportionately increased until each child shall be receiving a sum equal to 15 per cent. of the above mentioned average weekly wage, but in no event shall the total amount payable exceed 66 2/3 per centum of such wages; and if the payments to the widow shall otherwise cease, or if the payments to any child cease by operation of law or otherwise, then the payments to each of the remaining children shall be increased 10 per cent. of the said average weekly wage; and to Lillian E. Stewart in the sum of $95.50 on account of the funeral expenses of William M. Stewart, deceased; and said appeal having been argued in the Court of Appeals by Frank R. Savidge, Esq., of counsel for the appellant, and E. C. Aiken, Deputy Attorney General, for the State Industrial Commission, and the Court of Appeals, after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from be affirmed with costs; and further ordered that the record and proceedings be remitted to the Appellate Division of the Supreme Court, Third Judicial Department, there to be proceeded upon according to law; and the said remittitur having been filed in this court,

Now, on motion of Charles N. Newton, Attorney General, attorney for the State Industrial Commission, it is
70 Ordered, that the order and judgment of the Court of Appeals be and the same is hereby made the order of this Court, and that the award or decision of the State Industrial Commission entered on the 18th day of September, 1918, be and the same is

hereby in all respects affirmed with $116.50 costs to be paid by the appellant.

[Seal of Supreme Court, Appellate Division.]

JOSEPH H. HOLLANDS,
Clerk.

71 [Endorsed:] New York Supreme Court, Appellant Division Third Department. In the Matter of the Claim of Lillian E. Stewart, for compensation, etc., vs. Knickerbocker Ice Company. Order Affirming Order. Charles D. Newton, Attorney General, Attorney for St. Ind. Com. Capitol, Albany, N. Y.

New York Court of Appeals.

72 KNICKERBOCKER ICE COMPANY, Plaintiff-in-Error.

against

LILLIAN E. STEWART, Defendant-in-Error.

Application for Writ of Error.

To the Honorable Frank H. Hiscock, Chief Judge of the New York Court of Appeals:

The petition of Knickerbocker Ice Company respectfully shows:

On August 10th, 1918, Lillian E. Stewart filed a claim with the New York State Industrial Commission for compensation, under the Workmen's Compensation Law, for the death of her husband, William M. Stewart, which occurred on August 3rd, 1918, while in the employ of the Knickerbocker Ice Company, a New Jersey corporation. Said Stewart at the time of the accident, which resulted in his death, was engaged in the regular course of his employment as a bargeman on a vessel belonging to your petitioner, and while standing on a dock or pier at the corner of 95th Street and North River, New York City, participating in the dismantling of a derrick and rigging which had been used to unload ice from his barge, lost his balance and fell back into the river and was drowned. The injury was accidental. The employe just prior to dismantling the derrick, had been engaged in the hold of the barge, hooking ice to the tongs, which were raised to the dock by the derrick which he was dismantling when killed.

73 Your petitioner's business in this State consists of ice storage and ice distribution, as well as in the operation of barges for the purpose of distributing ice from ice houses on the upper Hudson within the State of New York to points in New York City.

Your petitioner objected to the making of an award on various grounds set out in the record and set out in the assignments of error made in connection with this application for a writ of error. The Commission, however, on September 28th, 1918, made an award

of compensation claiming to act under the Workmen's Compensation Law of the State of New York, under the provisions of Chapter 67 of the Consolidated Laws, being Chapter 816 of the Laws of 1913, as reenacted and amended by Chapter 316 of the Laws of 1914, and as further amended by the Laws of 1915, 1916, 1917 and 1918.

From said award your petitioner appealed to the Appellate Division of the Supreme Court, Third Judicial Department, and said Appellate Division affirmed said award. Thereupon your petitioner appealed from said order to the New York Court of Appeals, which is the highest court in the State of New York, and said Court of Appeals adjudged that said order of said Appellate Division should be affirmed, and it remitted the record with its said judgment to the said Appellate Division, which thereupon made said judgment of the Court of Appeals the judgment of said Appellate Division. Said record is now with said Appellate Division.

Inasmuch as certain errors appear in the judgment en-
74 tered upon the remittitur of the Court of Appeals and in the proceedings had prior thereto, as recited in the annexed assignments of error, your petitioner prays for the allowance of a writ of error returnable to the Supreme Court of the United States, and a citation.

And so it will ever pray, etc.

Dated, July 15, 1919.

KNICKERBOCKER ICE COMPANY,
By FRANK R. SAVIDGE,
Its Attorney.

75 [Endorsed:] New York Court of Appeals. Knickerbocker Ice Company, Plaintiff-in-Error, against Lillian E. Stewart, Defendant-in-Error. Application for Writ of Error, (orig). Frank R. Savidge, Attorney for Plaintiff-in-Error, 45 Cedar Street, Borough of Manhattan, New York City. Read on application for writ of error, July 17, 1919. F. H. H., Ch'f Judge Court of Appeals.

76 Supreme Court of the United States.

KNICKERBOCKER ICE COMPANY, Plaintiff-in-Error,

against

LILLIAN E. STEWART, Defendant-in-Error.

Assignments of Error by Plaintiff-in-Error.

And now comes Knickerbocker Ice Company, plaintiff-in-error in the above entitled matter, and in connection with its application for a writ of error makes its assignments of error:

1. The Court erred in deciding that the Workmen's Compensation Law, L. 1913, ch. 816, as reenacted by L. 1914, ch. 41, and amended by Chapter 316 of the Laws of 1914, and as further amended by the Laws of 1915, 1916, 1917 and 1918, was not unconstitutional, in that it constitutes a regulation and a burden upon

commerce among the several states in violation of Article 1, Sec. 8, of the Constitution of the United States, whereby was drawn in question the validity of a statute of or an authority exercised under the State of New York, on the ground of their being repugnant to the Constitution or laws of the United States, and the decision was in favor of their validity; and therein a right, privilege or immunity was claimed by the plaintiff in error under the Constitution or statutes of the United States and the decision was against the right, privilege or immunity especially set up or claimed under such Constitution and statutes.

2. The Court erred in deciding that the Workmen's Compensation Law, L. 1913, ch. 816, as reenacted by L. 1914, ch. 41, and amended by Chapter 316 of the Laws of 1914, and as further amended by the Laws of 1915, 1916, 1917 and 1918, was not unconstitutional in that it violates Article 3, Sec. 2, of the Constitution of the United States conferring admiralty jurisdiction upon the courts of the United States, whereby was drawn in question the validity of a statute of or an authority exercised under the United States, and the decision was against their validity; and therein was drawn in question the validity of a statute of or an authority exercised under the State of New York, on the ground of their being repugnant to the Constitution of laws of the United States and the decision was in favor of their validity; and therein a right, privilege or immunity was claimed by the plaintiff in error under the Constitution or statutes of the United States and the decision was against the right, privilege or immunity especially set up or claimed under such Constitution or statutes.

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3. The Court erred in deciding that Section 24 of Chapter 2 and Section 256 of Chapter 11, of the Judicial Code of the United States, as amended by Chapter 97 of the United States Statutes of 1917, in so far as rights and remedies under workmen's compensation acts of the several states are thereby saved to claimants, were not invalid and unconstitutional in that they violate Article 3, Section 2 of the Constitution of the United States conferring admiralty jurisdiction upon the courts of the United States, wherein was drawn in question the validity of a statute of or an authority exercised under the United States, and the decision was in favor of their validity; and therein was drawn in question the validity of a statute of or an authority exercised under the State of New York, on the ground of their being repugnant to the Constitution or laws of the United States, and the decision was in favor of their validity; and therein a right, privilege or immunity was claimed by the plaintiff in error under the Constitution or statutes of the United States and the decision was against the right, privilege or immunity specially set up or claimed under such Constitution or statutes.

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4. The Court erred in deciding that Section 24 of Chapter 2 and Section 256 of Chapter 11, of the Judicial Code of the United States, as amended by Chapter 97 of the United States Statutes in 1917, in so far as rights and remedies under workmen's compensation acts

of the several states are thereby saved to claimants, were not invalid and unconstitutional in that they constitute a regulation and a burden upon commerce among the several states in violation of Article 1, Section 8, of the Constitution of the United States, wherein was drawn in question the validity of a statute of or an authority exercised under the United States, and the decision was in favor of their validity; and therein was drawn in question the validity of a statute of or an authority exercised under the State of New York, on the ground of their being repugnant to the Constitution or laws of the United States, and the decision was in favor of their validity; and therein a right, privilege or immunity was claimed by the plaintiff in error under the Constitution or statutes of the United States and the decision was against the right, privilege or immunity
79 especially set up or claimed under such Constitution or statutes.

5. The Court erred in not rendering judgment in favor of the plaintiff in error, because said Workmen's Compensation Law, Laws of 1913, Chapter 816, as reenacted by the laws of 1914, Chapter 41, and is further amended by the Laws of 1915, 1916, 1917 and 1918, as applied to this plaintiff in error, is unconstitutional and void and in conflict with and in violation of Article 1, Section 8, Article 3, Section 2, of the Constitution of the United States, and because Section 24 of Chapter 2 and Section 256 of Chapter 11, of the Judicial Code of the United States, as amended by Chapter 97 of the United States Statutes of 1917, in so far as rights and remedies under workmen's compensation acts of the several states are thereby saved to claimants, as applied to this plaintiff in error, were invalid and unconstitutional in that they violate Article 3, Section 2 of the Constitution conferring admiralty jurisdiction upon the courts of the United States, and constitute a regulation and a burden upon commerce in violation of Article 1, Section 8 of the Constitution of the United States, wherein was drawn in question the validity of a statute of or an authority exercised under the United States and the decision was in favor of their validity; and whereby was drawn in question the validity of a statute of or an authority exercised under the State of New York on the ground of their being repugnant to the Constitution or laws of the United States and the decision was in favor of their validity; and therein a right, privilege or immunity was claimed by the plaintiff in error under the Constitution or statutes of the United States and the decision was against the right, privilege
80 or immunity especially set up or claimed under such Constitution or statutes.

Dated, New York, July 15, 1919.

FRANK R. SAVIDGE,
Attorney for Knickerbocker Ice Company.

81 [Endorsed:] Supreme Court of the United States. Knickerbocker Ice Company, Plaintiff-in-Error, against Lillian E. Stewart, Defendant-in-Error. Assignments of Error. (Orig.) Frank R. Savidge, Attorney for Plaintiff-in-Error, 45 Cedar Street, Borough of Manhattan, New York City. Read on Application for Writ of Error, July 17, 1919. F. H. H. Ch'f Judge, Court of Appeals.

82 New York Court of Appeals.

KNICKERBOCKER ICE COMPANY, Plaintiff-in-Error,

against

LILLIAN E. STEWART, Defendant-in-Error.

Order Allowing Writ of Error.

On reading of the petition of Knickerbocker Ice Company for writ of error and the assignments of error, and upon due consideration of the record of said cause:

It is ordered, that a writ of error be allowed from the Supreme Court of the United States to the Court of Appeals of the State of New York as prayed for in said petition and that said writ of error and citation thereon be issued, served and returned to the Supreme Court of the United States in accordance with law upon condition that the said petitioner and plaintiff-in-error Knickerbocker Ice Company give security in the sum of two thousand five hundred ($2,500) dollars, that the said plaintiff-in-error shall prosecute said writ of error to effect and, if said plaintiff-in-error fail to make its plea good, shall answer to the defendant-in-error for all costs and damages that may be adjudged or decreed on account of said writ of error.

And the said plaintiff-in-error now presenting a bond in the sum of two thousand five hundred ($2,500) dollars with the United States Fidelity and Guaranty Company as surety,

It is ordered that the same be and hereby is duly approved.

In witness whereof, I have hereunto set my hand this 17 day of July, 1919.

FRANK H. HISCOCK,
Chief Judge of the Court of Appeals of the State of New York.

83 [Endorsed:] New York Court of Appeals. Knickerbocker Ice Company, Plaintiff-in-Error, against Lillian E. Stewart, Defendant-in-Error. Order Allowing Writ of Error (orig.) Frank R. Savidge, Attorney for Plaintiff-in-Error, 45 Cedar Street, Borough of Manhattan, New York City.

84 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of New York, Appellate Division, Third Department, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in said Supreme Court. Appellate Division, on a remittitur from the Court of Appeals of the State of New York, before you, or some of you, being the highest court of law or equity of the said State in which decision could be had in the suit

between Lillian E. Stewart, plaintiff, and Knickerbocker Ice Company, defendant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of their validity; or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege or immunity especially set up or claimed under such clause of the said Constitution, statute, treaty or commission; a manifest error *had* happened to the great damage of the said defendant, as is said and appears by its complaint. We being willing that error, if any hath been, should be duly cor-
85 rected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward D. White, Chief Justice of the United States this 17 day of July in the year of our Lord one thousand nine hundred and nineteen.

[Seal of District Court of the United States, Southern District, N. Y.]

ALEX. GILCHRIST, JR.,
Clerk of the United States District Court, Southern District of New York.

The above writ is allowed by
FRANK H. HISCOCK,
Chief Judge of the New York Court of Appeals.

[Endorsed:] Supreme Court of the United States. Knickerbocker Ice Company, Plaintiff-in-Error, against Lillian E. Stewart, Defendant-in-Error. Writ of Error. Frank R. Savidge, Attorney for Plaintiff-in-Error, 45 Cedar Street, Borough of Manhattan, New York City.

86 UNITED STATES OF AMERICA, ss:

To Lillian E. Stewart and the State Industrial Commission, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of New York, Appellate Division, Third Department, wherein Knickerbocker Ice Company is plaintiff-in-error, and you are defendant-in-error, to show cause, if any there be, why the judgment rendered against the said plaintiff-in-error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, Hon. Frank H. Hiscock, Chief Judge of the New York Court of Appeals, this 17 day of July, in the year of our Lord one thousand nine hundred and nineteen.

FRANK H. HISCOCK,
Chief Judge of the New York Court of Appeals.

87 [Endorsed:] Supreme Court of the United States. Knickerbocker Ice Company, Plaintiff-in-Error, against Lillian E. Stewart, Defendant-in-Error. Citation. (Orig.) Frank R. Savidge, Attorney for Plaintiff-in-Error, 45 Cedar Street, Borough of Manhattan, New York City.

88 Supreme Court of the United States.

KNICKERBOCKER ICE COMPANY, Plaintiff-in-Error,

against

LILLIAN E. STEWART, Defendant-in-Error.

Prayer for Reversal.

To the Honorable the Supreme Court of the United States:

Now comes the above named plaintiff-in-error, and in connection with its writ of error issued by this Court to the Appellate Division of the Supreme Court of the State of New York, Third Department, it prays for a reversal of the judgment against it of said Appellate Division affirming an award of the State Industrial Commission, entered in the office of said Court, on January 7th, 1919, and it also prays for a reversal of the judgment of affirmance entered in the office of said Court on May 12th, 1919, upon the order or judgment of the Court of Appeals, and for a reversal of the judgment of the Court of Appeals affirming said judgment or orders.

FRANK R. SAVIDGE,
Attorney for Knickerbocker Ice Company,
Plaintiff-in-Error.

89 [Endorsed:] Supreme Court of the United States. Knickerbocker Ice Company, Plaintiff-in-Error, against Lillian E. Stewart, Defendant-in-Error. Prayer for Reversal. (Orig.) Frank R. Savidge, Attorney for Plaintiff-in-Error, 45 Cedar Street, Borough of Manhattan, New York City.

90 New York Court of Appeals.

72 KNICKERBOCKER ICE COMPANY, Plaintiff-in-Error,

against

LILLIAN E. STEWART, Defendant-in-Error.

Bond for Damages and Costs.

Know all men by these presents:

That we, Knickerbocker Ice Company, of — as Principal and the United States Fidelity and Guaranty Company, having an office and usual place of business at No. 47 Cedar Street, in the City of New York, County and State of New York, as Surety are held and firmly bound unto the above named Lillian E. Stewart in the sum of two thousand five hundred ($2,500.00) dollars, to be paid to the said Lillian E. Stewart, for the payment of which, well and truly to be made, we bind ourselves, our and each of our heirs, executors, successors, and assigns, jointly and severally, firmly by these presents.

Sealed, with our Seals and dated this 10th day of July, 1919.

Whereas, the above named Plaintiff-in-error Knickerbocker Ice Company has sued out a writ of error from the United States Supreme Court to the Court of Appeals from the State of New York, to reverse the judgment of said Court of Appeals, rendered on the 29th day of April, 1919, in the suit of Lillian E. Stewart, Plaintiff-Respondent against Knickerbocker Ice Company, Defendant-Appellant and entered in the Appellate Division of the Supreme Court, Third Department of said State, on the 12th day of May, 1919.

Now therefore, the Condition of This Obligation is Such,

91 that if the above named Knickerbocker Ice Company shall prosecute its writ of error to effect, and answer all damages and costs if it fail to make its plea good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

Signed, Sealed and Delivered in the presence of,

UNITED STATES FIDELITY
AND GUARANTY COMPANY,
By S. FRANK HEDGES,
Attorney-in-fact.

Attest:—

WILLIAM H. ESTWICK,
Attorney-in-fact.

92 *Affidavit, Acknowledgment and Justification by the United States Fidelity and Guaranty Company.*

STATE OF NEW YORK,
County of New York, ss:

Before me personally came S. Frank Hedges, known to me to be — of the United States Fidelity and Guaranty Company, the corporation described in and which executed the annexed bond of Knickerbocker Ice Company as surety thereon, who being by me duly sworn, deposes and says that he resides in the City of New York, State of New York, and that he is the Attorney-in-fact of the said United States Fidelity and Guaranty Company, and knows the corporate seal thereof; that said Company is duly and legally incorporated under the laws of the State of Maryland; that said Company has complied with the provisions of the Act of Congress of August 13, 1894, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to the annexed bond of Knickerbocker Ice Company is the corporate seal of the said United States Fidelity and Guaranty Company, and was thereto affixed by order and authority of the Board of Directors of said Company; and that he signed his name thereto by like order and authority as such Attorney-in-fact of said Company; and that he is acquainted with William H. Estwick and knows him to be Attorney-in-fact of said Company; and that the signature of said William H. Estwick subscribed to said bond is the genuine handwriting of said William H. Estwick and was thereto subscribed by order and authority of said Board of Directors, and in the presence of said deponent; and that the assets of said Company, unencumbered and liable to execution, exceed its claims, debts and liabilities, of every nature whatsoever, by more than the sum of two million dollars ($2,000,000.00).

[Seal United States Fidelity & Guaranty Company, Incorporated 1895.]

S. FRANK HEDGES.

Sworn to, acknowledged before me, and subscribed in my presence this 10th day of July, 1919.

AUGUSTUS WALLAUER,
Notary Public, New York County.

Notary Public, Queens County No. 1983.
Certificate filed in New York County No. 363 Register's No. 1370, Richmond, Westchester, Nassau, Putnam, Orange, Suffolk, & Rockland Counties. Term expires March 30, 1921.

93 [Endorsed:] Knickerbocker Ice Company, Principal, United States Fidelity & Guaranty Company, Surety, to Lillian E. Stewart. Bond for Damages and Costs. The within undertaking is approved as to form and as to the sufficiency of the

surety. —— ——, United States Fidelity and Guaranty Co., 47 Cedar Street, New York City, Surety.

94 Supreme Court of the United States.

KNICKERBOCKER ICE COMPANY, Plaintiff-in-Error,

against

LILLIAN E. STEWART, Defendant-in-Error.

Admission of Service.

Service is admitted of the following papers herein:

Application for Writ of Error.
Assignments of Error.
Order Allowing Writ of Error.
Writ of Error.
Citation.
Prayer for Reversal.
Bond for Damages and Costs.

Dated August 6th, 1919.

CHARLES D. NEWTON,
(E. C. A.,)
Attorney General, State of New York.

Dated August 20th, 1919.

BERNARD Z. SHMITAG,
Attorney for State Industrial Commission.

95 [Endorsed:] Supreme Court of the United States. Knickerbocker Ice Company, Plaintiff-in-Error, vs. Lillian E. Stewart, Defendant-in-Error. Admission of Service. Frank R. Savidge, Attorney for Plaintiff-in-Error, 45 Cedar Street, Borough of Manhattan, New York City.

96 STATE OF NEW YORK,
County of Albany, ss:

I, Joseph H. Hollands, Clerk of the Supreme Court of the State of New York, Appellate Division, Third Department, pursuant to a writ of error directed to the Honorable the Judges of the said Appellate Division, Third Department, which said writ was allowed by the Honorable Frank H. Hiscock, Chief Judge of the New York Court of Appeals, and signed by the Clerk of the United States District Court for the Southern District of New York on July 17, 1919, do hereby certify the writing hereto annexed to be a true, complete and perfect copy of the record of assignments of error and of all proceedings in the case of Lillian E. Stewart, claimant-respondent, against Knickerbocker Ice Company, defendant-appellant, as fully as the same remain on file and of record in my office.

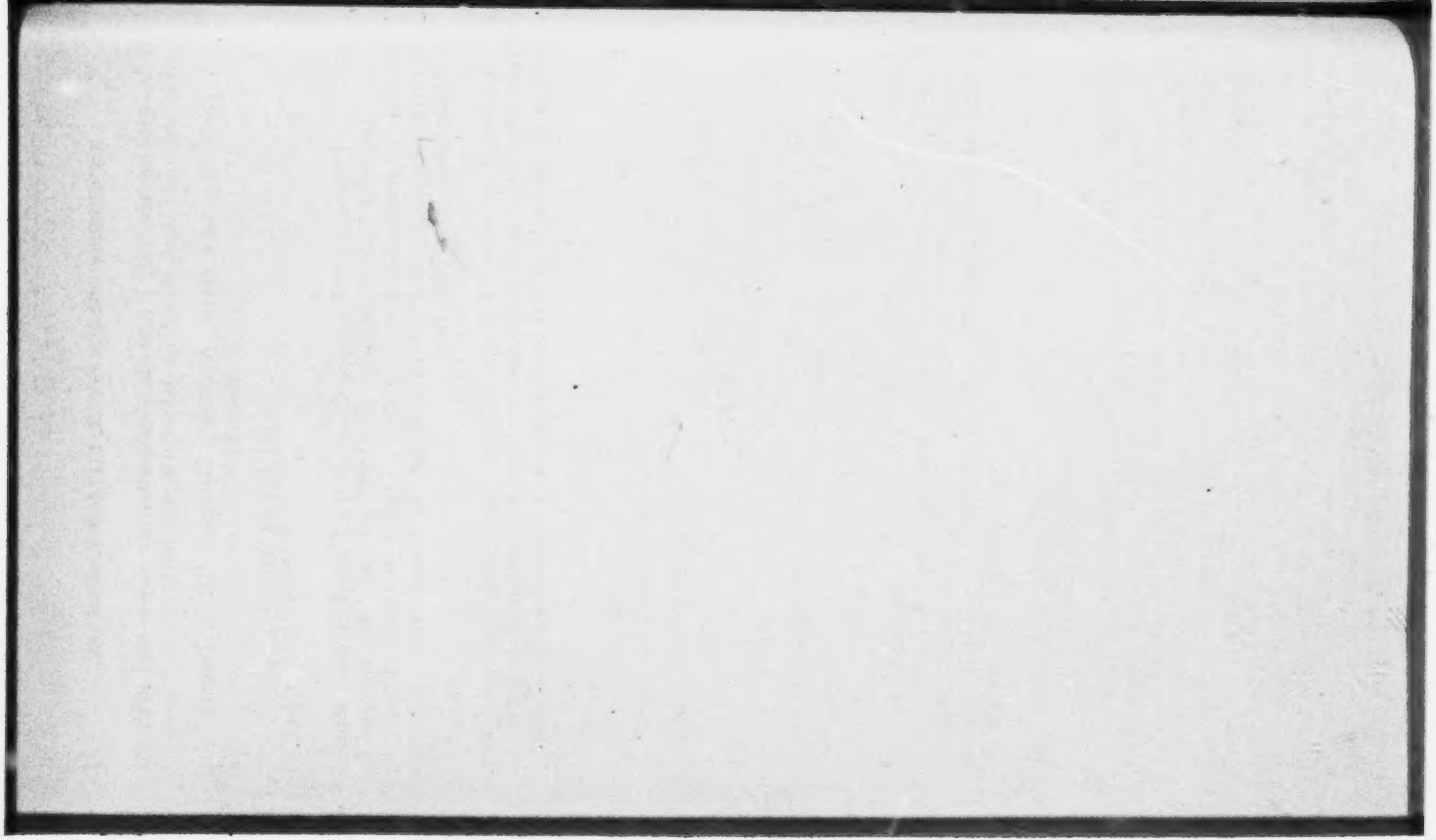
In witness whereof, I hereunto subscribe my name and affix the seal of the said Court, this 27th day of August, 1919.

[Seal Supreme Court, Appellate Division, Third Department.]

JOSEPH H. HOLLANDS,
Clerk.

97 [Endorsed:] Supreme Court of the United States. Knickerbocker Ice Company, Plaintiff-in-Error, vs. Lillian E. Stewart, Defendant-in-Error. Copy. Clerk's Return. Frank R. Savidge, Attorney for Plaintiff-in-Error, 45 Cedar Street, Borough of Manhattan, New York City.

Endorsed on cover: File No. 27,298. New York Supreme Court. Term No. 543. Knickerbocker Ice Company, plaintiff in error, vs. Lillian E. Stewart. Filed September 11, 1919. File No. 27,298.



Supreme Court, U. S.
FILED
SEP 11 1919
JAMES D. MAHER,
CLERK.

Supreme Court of the United States

October Term 1919

No. 543

KNICKERBOCKER ICE COMPANY,
Plaintiff in error,

vs.

LILLIAN E. STEWART,
Defendant in error.

MOTION TO ADVANCE

CHARLES D. NEWTON,
Attorney-General.

E. C. AIKEN,
Deputy Attorney-General of Council for the State Industrial Commission.

FRANK R. SAVIDGE,
Attorney for Plaintiff in error.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1919

No. ——

KNICKERBOCKER ICE COMPANY,
Plaintiff-in-Error,

against

LILLIAN E. STEWART,
Defendant-in-Error.

SIR:

Please take notice that a motion will be made at a session of this court appointed to be held on the 13th day of October, 1919, at 12 o'clock noon, or as soon thereafter as counsel can be heard, to advance the hearing and argument of the appeal in the above cause, and for such other relief as may be proper.

Dated, Albany, N. Y., August 20, 1919.

CHARLES D. NEWTON,
Attorney-General,
Attorney for State Industrial Commission,
Capitol, Albany, N. Y.

E. C. AIKEN,
Deputy Attorney-General,
Of Counsel.

To

FRANK R. SAVIDGE, ESQ.,
Attorney for Plaintiff-in-Error,
45 *Cedar St., New York.*

KNICKERBOCKER ICE COMPANY,
Plaintiff-in-Error.

against

LILLIAN E. STEWART,
Defendant-in-Error.

Now comes the State Industrial Commission, representing the defendant-in-error, and moves this court to advance this cause on the docket of this court.

STATEMENT AND REASONS FOR ADVANCEMENT.

This cause is now pending in this court on writ of error allowed by Hon. Frank H. Hiscock, Chief Judge of the Court of Appeals.

The State Industrial Commission of New York is charged under the statutes of the State of New York with the administration of the Workmen's Compensation Law in said State, and by the said law is made a party to all proceedings upon appeal in matters decided by it.

That in the above entitled matter, an award was made to Lillian E. Stewart, of compensation or benefits for the death of her husband, William M. Stewart, which occurred on August 3, 1918, while in the employ of the Knickerbocker Ice Company, a New Jersey corporation. Said Stewart, at the time of the accident which resulted in his death, was engaged in the regular course of his employment as a bargeman, on a vessel belonging to the plaintiff-in-error, and while standing on a dock or pier at the corner of 95th Street and North River, New York City, participating

in the dismantling of a derrick and rigging which had been used to unload ice from his barge, lost his balance and fell back into the river and was drowned.

The award was made by said State Industrial Commission to his widow under the provisions of the Workmen's Compensation Law of New York, which award was affirmed by the Appellate Division of the Supreme Court of said State of New York, and by the Court of Appeals.

That the plaintiff-in-error has challenged the said award on the ground that the said State Industrial Commission had no jurisdiction, and that the amendment to section 24 of chapter 2 and section 256 of chapter 11 of Judicial Code of United States, as amended by chapter 97 of the United States Statutes of 1917, in so far as rights and remedies under workmen's compensation acts of the several states are thereby saved to claimants, was invalid on the ground of its being repugnant to the Constitution of the United States.

The said Appellate Division of the Supreme Court of the State of New York, and the Court of Appeals of said State, hold that said law was valid and not repugnant to the Constitution or laws of the United States.

That in addition to the present case there are also pending other cases involving the same question, which cannot be decided until a hearing and decision by this court of this case, brought up by writ of error. There are also cases pending in Admiralty, and Mr. Justice Hand, in the United States District Court of New York, has held that the Workmen's Compensation Law, so far as it

applies to employes working on vessels within the territorial waters of said State, is exclusive remedy, and that there is no remedy in Admiralty which the said employes can invoke. That cases are constantly arising under the Workmen's Compensation Law where longshoremen or sailors working in New York harbor are injured, and it is important, therefore, that the law should be settled by this court at an early date, so that there may be a due administration of the Workmen's Compensation Law in the State of New York. That most of the claimants for compensation are men or women dependent upon their wages and of very limited means, and it is therefore very desirable to have an early decision.

CHARLES D. NEWTON,
Attorney-General.

E. C. AIKEN,
Of Counsel,
For the State Industrial Commission

KNICKERBOCKER ICE COMPANY,
Plaintiff-in-Error,

against

LILLIAN E. STEWART,
Defendant-in-Error.

Now comes the Knickerbocker Ice Company, plaintiff-in-error, represented by Frank R. Savidge, and on motion to advance this cause concurs with the counsel for the State Industrial Commission.

FRANK R. SAVIDGE,
Counsel for Plaintiff-in-Error.

IN THE

SUPREME COURT OF THE UNITED STATES

[redacted] COMPANY,
Plaintiff in Error,

vs.

[redacted] STEWART,
Defendant in Error.

In Error to the Appellate Division, Third Department, of the Supreme Court of the State of New York.

Brief in Behalf of Plaintiff in Error.

Frank B. Sawtelle,
Attorney for Plaintiff in Error.

Lawyers' Brief Print. Co., 49 Wendell St., Phila.

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Argument:

Point 1. William M. Stewart, the husband of the defendant in error, was at the time of his death engaged in a maritime employment, under a maritime contract, upon navigable waters; the New York Workmen's Compensation Law, when applied to awards made for injuries to employes engaged in such employments is in contravention of the Constitution of the United States, as destructive of the uniformity in maritime law which the Constitution was designed to establish, and has been so held by the Court; the subsequent amendment of the Judicial Code of the United States by Congress, attempting to allow the states to extend their workmen's compensation laws to maritime employments, is likewise unconstitutional and for the same reasons; the uniformity of the maritime law is preserved by the Constitution, and no new remedies can be created in the maritime law except by act of Congress establishing a uniform law, to be administered by the United States Courts 11

Point 2. The New York Workmen's Compensation Law, as applied to maritime employments, is also unconstitutional in that an essential part of the Law bars rights of action in admiralty, which cannot be barred by legislation of the states 15

Cases cited:

Atlantic Transport Co. vs. Imbrovek, 234 U. S. 52 ..... 11, 15
Matter of Anderson vs. Johnson Lighterage Co., 224 N. Y. 1 11
Butler vs. Boston & Savannah Steamship Co., 130 U. S. 527 14
Clyde S. S. Co. v. Walker, 244 U. S. 255 9
Matter of Doey vs. Howland, 224 N. Y. 30 11
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In re Garnett, 141 U. S. 1 14
Jensen v. Southern Pac. Co., 215 N. Y. 514 15
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The Lotawanna, 21 Wall 558 ..... 13, 16
The Max Morris, 137 U. S. 1 18
Matter of Post v. Burger, 216 N. Y. 544 9
The Roanoke, 189 U. S. 185 12
The Rosalie Mahoney, 218 Fed. 695 18
Southern Pacific Co. vs. Jensen, 244 U. S. 205 ..... 9, 11, 12
The Steam Lighter Howell (not reported) 19
The Transfer No. 12, 221 Fed. 409 16
Workman vs. New York City, 179 U. S. 552 17
Winfield vs. New York Central R. R. Co., 216 N. Y. 284 8

IN THE

Supreme Court of the United States.

December Term, 1919. No. 543.

KNICKERBOCKER ICE COMPANY,
Plaintiff in Error,

v.

LILLIAN E. STEWART,
Defendant in Error.

I.

STATEMENT OF CASE AND QUESTIONS INVOLVED.

This cause involves the constitutionality of the Workmen's Compensation Law of the State of New York and the validity of Sections 24 and 256 of the Judicial Code of the United States as amended in 1917, in so far as these sections confer jurisdiction on state authorities to enact Workmen's Compensation Laws effective over navigable waters of the United States and persons employed under maritime contracts.

II.

STATEMENT OF FACTS.

The defendant in error began this proceeding to obtain compensation for the death of her husband under the provisions of the New York Workmen's

Compensation Law, by the filing of a claim for compensation with the State Industrial Commission, a body established for the administration of that Law (P. 1). The Commission after hearing, made its findings, which are on pages 28 and 29 of the Record.

The facts found by the Commission are that the plaintiff in error is a corporation of the State of New Jersey, engaged in the business of ice storage and distribution, and the operation of barges on the Hudson River for the purpose of distributing ice from ice houses on the Upper Hudson River within the State of New York, to points in New York City, and that William M. Stewart, the husband of the defendant in error, was employed as a barge-man on one of said barges.

On August 3rd, 1918, the said William M. Stewart was engaged in the regular course of his employment, and while standing on a dock or pier at the corner of 95th Street and North (Hudson) River, New York City, participating in the dismantling of a derrick and rigging which had been used to unload ice from the barge, he lost his balance and fell backward into the river and was drowned.

At the hearing before the Commission the plaintiff in error urged that the Compensation Law as applied to this injury was in contravention of Article III, Section 2 of the Federal Constitution, it being a case of a maritime jurisdiction, and on the further ground that the amendments of Sections 24 and 256 of the Judicial Code of the United States in 1917, were unconstitutional and in excess of the powers of Congress under the Constitution. (P. 21.)

The Commission overruled these objections and awarded compensation of $6.93 per week to the widow during widowhood, with two years' compensation in

case of re-marriage, and compensation of $1.69 per week to each of two children until they should reach the age of eighteen; $95.50 on account of funeral expenses was also awarded.

Pursuant to Section 23 of the law, the employer appealed from the award or decision of the Commission to the Appellate Division of the Supreme Court, Third Department. The award was there affirmed without opinion. (Pages 30, 31.)

The employer then appealed to the Court of Appeals, where the order of the Appellate Division was affirmed and the record was remitted to the Appellate Division of the Supreme Court, Third Department. (Pages 34, 35.) Thereupon the employer sued out its writ of error in this Court.

The opinion of the Court of Appeals, written by Mr. Justice Hiscock, begins on Page 37 of the Record, and is reported in 226 N. Y. 302.

III.

SPECIFICATION OF ERRORS.

Plaintiff in error contends that the Court of Appeals erred in not deciding:

1. That the New York Workmen's Compensation Law is contrary to the Constitution of the United States, in that it constitutes a regulation of and burden upon interstate commerce.

2. That the New York Workmen's Compensation Law is unconstitutional in that it violates Article III, Section 2 of the Constitution of the United States conferring admiralty jurisdiction upon the Courts of the United States.

3. That Sections 24 and 256 of the Judicial Code of the United States, as amended by Chapter 97 of the United States statutes of 1917 are invalid and unconstitutional, in so far as rights and remedies under Workmen's Compensation Acts of the several states are thereby saved to claimants, in that they violate Article III, Section 2 of the Constitution of the United States conferring admiralty jurisdiction upon the Courts of the United States. (Assignments of Error, pages 42, 43, 44.)

IV.

BRIEF OF ARGUMENT.

1. William M. Stewart, the husband of the defendant in error, was at the time of his death engaged in a maritime employment, under a maritime contract, upon navigable waters; the New York Workmen's Compensation Law, when applied to awards made for injuries to employes engaged in such employments is in contravention of the Constitution of the United States, as destructive of the uniformity in maritime law which the Constitution was designed to establish, and has been so held by the Court; the subsequent amendment of the Judicial Code of the United States by Congress, attempting to allow the states to extend their workmen's compensation laws to maritime employments, is likewise unconstitutional and for the same reasons; the uniformity of the maritime law is preserved by the Constitution, and no new remedies can be created in the maritime law except by Act of Congress establishing a uniform law, to be administered by the United States Courts.

2. The New York Workmen's Compensation Law, as applied to maritime employments, is also unconsti-

tutional in that an essential part of the Law bars rights of action in admiralty, which cannot be barred by legislation of the states.

V.

THE NEW YORK WORKMEN'S COMPENSATION LAW.

The Law is Chapter 816 of the Laws of New York of 1913, as re-enacted and amended by Chapter 41 of the Laws of 1914, constituting Chapter 67 of the consolidated Laws, as amended by Chapter 316 of the Laws of 1914, and by Chapters 167, 168, 615 and 674 of the Laws of 1915, and by Chapter 622 of the Laws of 1916, and by Chapter 705 of the Laws of 1917.

Chapter 249 of the Laws of 1918, effective prior to the award in this case, re-enacts the portions of the law constituting Groups 8 and 10, relating to operation and repair of vessels and longshore work. These sections were re-enacted in exactly the same form as before. This re-enactment was on account of the Jensen decision in this Court, which we will refer to later.

The law, after defining 45 groups of industries to which it applies, provides in Section 10 as follows:

> "Liability for Compensation. Every employer subject to the provisions of this chapter shall pay or provide as required by this chapter compensation according to the schedules of this article for the disability or death of his employee resulting from an accidental personal injury sustained by the employee arising out of and in the course of his employment, without regard to fault as a cause of such injury, except where the injury is occasioned by the wilful intention of the injured employee to bring about the injury or death of

himself or of another, or where the injury results solely from the intoxication of the injured employee while on duty."

It is provided that the liabilty thus prescribed shall be exclusive unless the employer fails to secure the payment of such compensation in the manner required by the law (Sec. 11.)

The option is given the employer to secure such compensation by payment of premiums to the State and thus insuring in the State fund, to insure with insurance companies, or to carry his own insurance (Sec. 50.)

For failure to pay or provide compensation the employer, in addition to being liable to a suit by the injured employee, with the ordinary common law defenses abolished, or liable for compensation at the workmen's election (Sec. 11), is liable to a penalty equal to the *pro rata* premium which would have been payable for insurance in the State fund during the period of non-compliance with the Law (Sec. 50.)

In Section 15 of the Law is a schedule setting forth the amount of compensation payable to the employee for various kinds of disability therein specified; and in Section 16 is provided the compensation payable to the representatives of deceased workmen.

In addition to the payment of compensation the employer must furnish the employee with such medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus as may be required or requested by the employee during sixty days after the injury (Sec. 13), and in case of the death of the employee, the employer must pay the reasonable funeral expenses (Sec. 16.)

It is presumed that all claims made for compensation come within the law and that sufficient notice

has been given in the absence of substantial evidence to the contrary (Sec. 21.) The right of compensation is preferred without limit of amount against the assets of the employer (Sec. 34.)

The amount of the compensation depends upon the extent of the disability and the average earnings of the workman (whether the earnings are from the present employer or not) if he has worked steadily in the employment in which he was injured, but otherwise upon his earning capacity as measured by the earnings of those who have worked in the same trade. In case of death it depends also upon the number of legal dependents and the length of time they live (Secs. 14-16.)

The only alternative that the employer has to the payment of the arbitrary sums specified in the schedules of the law is to pay to the State Fund or to some insurance company a premium of from a fraction of 1 per cent. to about one-third of the pay-roll.

Certain features of the operation of the law may here be pointed out.

(a) The law imposes no rule of conduct upon the employer with respect to conditions of labor in the various industries covered by the law. It imposes no duty with regard to the place where the workmen shall work, the character of the machinery, tools or appliances to be used, the rules or regulations to be promulgated for the safety of those employed in and about the industry. It prescribes no safeguards or safety appliances. There is not a word in the law dealing with the health, comfort, or safety of the employee, or the conditions of labor.

(b) It imposes liability on the employer although

he is carrying on a lawful business in a lawful manner, although he has used every precaution that human foresight and ingenuity can devise, although the accident was caused by the wrongful act of a third party or by vis major. The Court of Appeals has said:

> "Perhaps, without inaccuracy, it may be said that the primary purpose of this act was to give compensation in those cases where no claim of negligence on the part of the employer could reasonably be made." Winfield v. New York Central, etc., R. R. Co., 216 N. Y. 284, 289.

(c) It imposes liability upon the employer to pay compensation to the employee for injuries caused solely by the negligence of the employee himself, no matter how gross.

(d) The amount of money that is taken from the employer to compensate the employee, is arbitrary, and is not based upon the actual damage suffered or loss sustained by the injured employee.

(e) There is no limitation upon the period of time for which compensation for permanent total disability or death must be paid. Compensation is payable so long as the injured man or the designated dependents live.

(f) While the law purports to deal with those engaged in hazardous employments, nearly all the recognized industries are included within the law. Substantially all employments are declared hazardous, whether they are so in fact or not.

(g) The mere filing of a claim for compensation puts upon the employer the burden of disproving the claim by substantial evidence. Jurisdictional facts including the fact of notice are presumed (Sec. 21.)

(h) The law has been held to be extra-territorial in its operation. It applies to injuries happening outside the State as well as to injuries happening within the State. Matter of Post v. Burger, 216 N. Y. 544.

(i) The law is compulsory on all employers engaged in the classes of business to which it applies. The employer has no election to pay compensation or to be liable to suit with the common law defenses abolished, as he has under most other workmen's compensation laws. If he refuses to comply with the provisions of the law, he is not only penalized and liable to a common law suit with the common law defenses abolished, but at his employee's election he is also liable for the compensation provided in the law.

VI.

HISTORY OF PREVIOUS DECISIONS AND SUBSEQUENT LEGISLATION UPON THE SUBJECT OF THE CONSTITUTIONALITY OF THE NEW YORK WORKMEN'S COMPENSATION LAW.

The constitutionality of the Law in its present form was challenged before this Court in the cases of:

Southern Pacific Co. vs. Jensen, 244 U. S. 205.
Clyde Steamship Co. vs. Walker, 244 U. S. 255.

In these cases, this Court held that the Law was invalid upon the three following grounds:

1. That it was *unconstitutional* and in contravention of Article III, Section 2 of the Constitution of the United States.

2. That it was in conflict with the Judicial Code of the United States.

3. That it was in conflict with the expressed policy of Congress regarding shipping.

After the Jensen decision had been handed down, Congress by Act of October 6th, 1917, amended Sections 24 and 256 of the Judical Code of the United States, so as to add the following exception to the exclusive grant of jurisdiction to the Courts of the United States:

> "Saving to suitors in all cases, the right of a common law remedy when the common law is competent to give it, *and to claimants, the rights and remedies under the Workmen's Compensation Law of any State.*" The portions in italics are the new matter added by the amendments.

By these amendments Congress has disposed of the second and third grounds upon which this Court had held the Law to be invalid, but the first ground, the unconstitutionality of the law, cannot be overcome by Act of Congress.

After the amendment of the Judical Code by Congress above referred to, the New York State Legislature re-enacted Groups 8 and 10, of the Workmen's Compensation Law, relating to operation and repair of vessels, and to longshore work, in exactly the same form as before, the reason for said re-enactment being stated (Sec. 1, Laws of 1918, Chapter 249) in the law, which recites that these groups "having been declared unconstitutional by the United States Supreme Court as conflicting with the admiralty jurisdiction of the United States, but subsequently authorized by act of Congress, are hereby re-enacted."

Point 1.

William M. Stewart, the husband of the defendant in error, was at the time of his death engaged in a maritime employment, under a maritime contract, upon navigable waters; the New York Workmen's Compensation Law, when applied to awards made for injuries to employes engaged in such employments is in contravention of the Constitution of the United States, as destructive of the uniformity in maritime law which the Constitution was designed to establish, and has been so held by the Court; the subsequent amendment of the Judicial Code of the United States by Congress, attempting to allow the states to extend their workmen's compensation laws to maritime employments, is likewise unconstitutional and for the same reasons; the uniformity of the maritime law is preserved by the Constitution, and no new remedies can be created in the maritime law except by act of Congress establishing a uniform law, to be administered by the United States Courts.

The work of unloading a vessel is a maritime employment and is in performance of a maritime contract. This was held in the cases of:

Atlantic Transport Co. vs. Imbrovek, 234 U. S., 52.
Southern Pacific Co. vs. Jensen, 244 U. S., 205.
Matter of Anderson vs. Johnson Lighterage Co., 224 N. Y., 1.
Matter of Doey vs. Howland Co., 224 N. Y., 30.
Matter of Keator vs. Rock Plaster Co., 224 N. Y., 2.

The New York Workmen's Compensation Law, when applied to a claim arising from injuries received in a maritime employment, was held by this Court to

conflict with Article III, Sections 1 and 2 of the Constitution of the United States, *and* with the Judicial Code of the United States, in *Southern Pacific Co. vs. Jensen* (224 U. S., 205.) The decision is stated to rest upon the following *three separate grounds* (pages 217-218):

> 1. If New York can subject foreign ships coming into her ports to such obligations as those imposed by her Compensation Statute, other states may do likewise. The necessary consequence would be the destruction of the very uniformity in respect to maritime matters which the Constitution was designed to establish, and freedom of navigation between the states and with foreign countries would be hampered and impeded. A far more serious injury would result to commerce than could have been inflicted by the Washington statute authorizing a materialman's lien condemned in The Roanoke (189 U. S., 185.) The legislature exceeded its authority in attempting to extend the statute under consideration to conditions like those here disclosed. So applied, it conflicts with the Constitution and to that extent is invalid.
>
> 2. Exclusive jurisdiction of all civil cases of admiralty and maritime jurisdiction is vested in the Federal District Courts, "saving to suitors, in all cases, the right of a common law remedy, when the common law is competent to give it." The remedy which the Compensation Statute attempts to give is of a character wholly unknown to the common law, incapable of enforcement by the ordinary processes of any Court and is not saved to suitors from the grant of exclusive jurisdiction.
>
> 3. And finally this remedy is not consistent with the policy of Congress to encourage investments in ships, etc.

By this decision the law was held unconstitutional.

After the Jensen decison had been handed down, Congress by Act of October 6th, 1917, amended Sections 24 and 256 of the Judicial Code partly above quoted, so as to read "saving to suitors, in all cases, the right of a common law remedy where the common law is competent to give it, and to claimants the rights and remedies under the workmen's compensation law of any state."

These amendments may meet and overcome the second and third objections of this Court in the Jensen case, but not the first, nor can Congress by any act dispose of the first objection, for a law held unconstitutional by the Supreme Court cannot be made constitutional by any act of Congress.

This law has therefore been definitely and clearly stated to be beyond the power of a state to enact over navigable waters. As long as the Jensen decision stands, awards made for accidents or injuries received in maritime employments are inevitably invalid.

The basic reasoning of the decision is clear. The uniformity of the maritime law is preserved for all time in the Constitution.

In *The Lottawanna* (21 Wall. 558) Mr. Justice Bradley said:

> "One thing, however, is unquestionable; the Constitution must have referred to a system of law co-extensive with, and operating uniformly in, the whole country. It certainly could not have intended to place the rules and limits of maritime law under the disposal and regulation of the several states, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the states with each other or with foreign states."

This statement of principle has remained unchallenged for forty-five years.

Congress has power to amend or create the maritime law which shall prevail throughout the country (Butler vs. Boston & Savannah Steamship Co., 130 U. S. 527; in re Garnett, 141 U. S. 1, 14), but that is the limit of its power. It cannot delegate this power to the states, nor, under the limitation of the Constitution, authorize the enactment of laws that will destroy the uniformity of the maritime law.

In the *Jensen* case this Court said:

> "Where the subject is national in its character, and admits and requires uniformity of regulations * * * * Congress can alone act upon it and provide the needed regulations. The absence of any law of Congress on the subject *is equivalent to its declaration that commerce in that matter shall be free.*"
>
> "And the same character of reasoning which supports this rule, we think, makes imperative the stated limitations upon the power of the States to interpose where maritime matters are involved." (The italics are ours.)

It follows that if the new and revolutionary principle of compensation, involving the creation of a liability without fault, hitherto unknown in any system of law, is to be extended to maritime employments, this must be done by a law enacted by Congress establishing a uniform system throughout the country.

And, as stated in the last preceding quotation, "the absence of any law of Congress on the subject is equivalent to its declaration that commerce in that matter shall be free," Congress having enacted no maritime compensation law, its failure to do so is therefore the equivalent of an act of Congress declaring that the compensation principle shall not extend to maritime employments.

POINT 2.

The New York Workmen's Compensation Law, as applied to maritime employments, is also unconstitutional in that an essential part of the Law bars rights of action in admiralty, which cannot be barred by legislation of the states.

Employers, upon complying with the law, are given complete immunity from suits to recover for disabilities sustained by their workmen in the course of the employment. After providing in Section 10 that compensation for injuries shall be paid according to the schedules of the law, it is provided in Section 11 that

> "the liability prescribed by the last preceding section shall be exclusive, except * * * * an employer fail to secure the payment of compensation * * * *"

The exclusiveness of the law is a most vital feature. As the Court of Appeals said in Jensen v. Southern Pacific Co., 215 N. Y. 514:

> "Exemption from further liability upon paying the required premium into the state fund is an essential element of the scheme." (p. 21.)

The law in terms applies to workmen engaged in the operation of New York vessels wherever the vessel may go (Sec. 2, Group 8) and to those engaged in longshore work. The seamen's work is always upon vessels and the longshoremen's work is largely done on shipboard.

When an accident happens on shipboard a claim arises within the admiralty jurisdiction of the Courts of the United States and suit may be brought in admiralty against the ship owner, the vessel, or the employer of the workman. Atlantic Transport Company v. Imbrovek, 234 U. S. 52.

Accordingly, a seaman or a longshoreman injured while upon a vessel may have recourse to the District Courts of the United States for the enforcement of his rights. He has a lien upon the vessel through whose fault he was injured and this lien is a property right which does not abate even upon the death of the libellant. The Transfer No. 12; 221 Fed. 409.

The right of action given by the maritime law is not subject to modification by the law of the various states. In reposing admiralty jurisdiction in the Courts of the United States Congress has given them the exclusive power to state and enforce the admiralty law and has withdrawn this subject entirely from the power of the states. It is well settled that the jurisdiction of the admiralty courts cannot be increased, diminished or modified by state decisions or enactments.

By Section 2 of Article III of the Constitution of the United States it is provided that

> "The judicial power shall extend * * * * to all cases of admiralty and maritime jurisdiction."

By Section 1 of Article III it is provided that

> "The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress may, from time to time, ordain and establish."

By Section 24, Par. 3, of the Judicial Code of the United States (Act of March 3, 1911; 36 Stat. L. 1091) Congress has conferred upon the District Courts of the United States original jurisdiction "of all civil cases of admiralty and maritime jurisdiction."

In the case of The Lottawanna, 21 Wall. 558, after speaking of the provision of the Constitution conferring admiralty and maritime jurisdiction upon the

Courts of the United States, this Court said at page 575:

> "The Constitution must have referred to a system of law co-extensive with, and operating uniformly in, the whole country. It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several states, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the states with each other or with foreign states * * *"

The jurisdiction conferred upon the Courts of the United States is jurisdiction to hear the controversy and determine it according to the accepted principles and rules of maritime law. It is not jurisdiction merely to apply the local law of the various states as that law may be determined by decisions of the Courts or by legislative enactments. This is well shown by the case of Workman v. New York City, 179 U. S. 552.

There the owner of a vessel filed a libel against the City of New York to recover the damages caused by the negligence of those in charge of a fireboat belonging to the Fire Department of the City. At law there could have been no recovery because the City was at the time engaged in a governmental function. This Court held that the owner of the vessel had a right of action in admiralty, however, and could recover in the Courts of the United States having admiralty jurisdiction the damages which he had sustained. The Court said at page 557:

> "The proposition then which we must first consider may be thus stated: Although by the maritime law the duty rests upon courts of admiralty to afford redress for every injury to person or property where the subject matter is within the cognizance of such courts and when the wrong-

doer is amenable to process, nevertheless the admiralty courts must deny all relief whenever redress for a wrong would not be afforded by the local law of a particular State or the course of decisions therein."

This proposition the Court held was unfounded. At page 558 it said:

"The practical destruction of a uniform maritime law which must arise from this premise, is made manifest when it is considered that if it be true that the principles of the general maritime law giving relief for every character of maritime tort where the wrongdoer is subject to the jurisdiction of admiralty courts, can be overthrown by conflicting decisions of state courts, it would follow that there would be no general maritime law for the redress of wrongs, as such law would be necessarily one thing in one State and one in another; one thing in one port of the United States and a different thing in some other port. As the power to change state laws or state decisions rests with the state authorities by which such laws are enacted or decisions rendered, it would come to pass that the maritime law affording relief for wrongs done, instead of being general and ever abiding, would be purely local—would be one thing today and another thing tomorrow. That the confusion to result would amount to the abrogation of a uniform maritime law is at once patent."

See also The Max Morris, 137 U. S. 1; The Thode Fagelund, 221, Fed. 685.

It follows that whatever power a State may have to take from the injured workman his common law right of action, it cannot take from him his cause of action in admiralty. *The Fred. E. Sander*, 208 Fed. 724; *The Rosalie Mahony*, 218 Fed. 695, 698.

We have pressed this point in our argument because we believe that it embodies the most serious prac-

tical difficulty to allowing compensation laws of the states to operate within the jurisdiction of the maritime law.

The principle of all compensation laws is practically the same. They substitute compulsory insurance for previous liabilities existing under common and statute laws. If they are not effective to bar other remedies, the employer must carry a heavy burden. He must pay, under the New York law, for insurance of all employes engaged in maritime occupations, and he is, if the act be valid, subject to liability in admiralty in case of fault.

The whole scheme of the law thus fails in maritime employments. Compensation is only given by the law *if other remedies are barred.* If they cannot be barred in admiralty, an anomalous situation exists. The law would be not only enforced but enlarged far beyond the point that any state legislature has attempted to carry the compensation principle. It is not the intent, nor is it the effect of the New York law to give compensation in cases where other liability exists. To hold that the law is constitutional in maritime cases, *amends* the New York law. It is impossible to enforce it in maritime matters as it stands.

Another view is that expressed in the opinion by Mr. Justice Hand in *The Steam Lighter Howell* (U. S. Dist. Court, Southern District of New York, March 6th, 1919. Not reported.) In this case, which is now on its way, we understand, on appeal to this Court, it is actually held that causes of action in admiralty are effectually barred by the New York Workmen's Compensation Law, upon the ingenious reasoning that the *remedy* is not interfered with, but the underlying cause of action is eliminated, and the remedy becomes inoperative. In view of the great weight of authority the

other way, we do not believe that this Court will adopt the views of Mr. Justice Hand.

But one or the other position must eventually be taken. Either the State of New York, and all other states, must be allowed to make this inroad upon the maritime law, or their compensation acts must be held not to apply to maritime employments and to that extent to be invalid and unconstitutional.

That a middle course should be adopted by a construction which would amend the New York law by allowing compensation where the law itself does not give it, namely, in cases where other remedies are not barred, is unthinkable.

LAST POINT.

The judgment of the Court of Appeals of the State of New York should be reversed with costs.

Respectfully submitted,

FRANK R. SAVIDGE,
Attorney for Plaintiff in Error.

FREDERICK M. THOMPSON,
Of Counsel.

IN THE

Supreme Court of the United States

KNICKERBOCKER ICE COMPANY,
Plaintiff in Error,

vs.

LILLIAN E. STEWART,
Defendant in Error.

MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF.

FRANK R. SAVIDGE,
Attorney for Plaintiff in Error.

IN THE

Supreme Court of the United States

October Term, 1919. No. 543

KNICKERBOCKER ICE COMPANY

Plaintiff in Error

AGAINST

LILLIAN E. STEWART

Defendant in Error

SIRS:

Please take notice that a motion will be made at a session of this Court appointed to be held on the 19th day of April, 1920, at 12 o'clock noon, or as soon thereafter as counsel can be heard, for leave to file as a supplemental brief on behalf of the plaintiff in error, a copy of the opinion of the Supreme Court of the State of California in the case of Sudden & Christenson, a corporation, vs. The Industrial Accident Commission of the State of California, *et al.*, handed down very recently and since the argument and submission of the instant case.

Dated, New York, N. Y., April 10, 1920.

FRANK R. SAVIDGE
45 Cedar St., New York
Attorney for Plaintiff in Error

To:

Hon. Charles D. Newton, Attorney General,
Attorney for State Industrial Commission,
Capitol, Albany, N. Y.
Hon. E. C. Aiken, Deputy Attorney General, of
Counsel, Capitol, Albany, N. Y.

KNICKERBOCKER ICE COMPANY,
Plaintiff in Error,

AGAINST

LILLIAN E. STEWART,
Defendant in Error.

And now comes Knickerbocker Ice Company, the plaintiff in error, and moves this Court to grant leave to file as a supplemental brief on behalf of the plaintiff in error, a copy of the opinion of the Supreme Court of California in the case of Sudden & Christenson, a corporation, vs. The Industrial Accident Commission, *et al.*, very recently handed down and not yet reported.

STATEMENT AND REASONS FOR FILING

Since the argument in the instant case, the Supreme Court of California has had before it a similar case, and in a carefully considered and well reasoned opinion, of which this Court should have the benefit, has held that the Act of October 6, 1917, purporting to amend the Judicial Code so as to save to claimants the rights and remedies under the Workmen's Compensation Law of any State, is unconstitutional in that it violates Article III, Section 2, of the Con-

stitution of the United States. This opinion refers to and discusses the decision of the Appellate Division of the Supreme Court of New York, which is appealed from in the case at bar, and reaches the conclusion contended for by plaintiff in error.

FRANK R. SAVIDGE,
Attorney for Plaintiff in Error